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**Multicultural Citizenship or Citizenship in a Multicultural Polity**

**A Thesis Submitted to the School of Graduate Studies  
in Partial Fulfilment of the Requirements for  
a PHD in Philosophy  
in the Faculty of Arts and Sciences**

**University of Ottawa**

**by**

**Fred Bennett**



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## Abstract

Citizenship in liberal democracies has, until recently, been theorized as conferring equal legal status on all citizens irrespective of their race, religion, ethnicity, culture or language. While much discrimination and unequal treatment existed in practice, the theory was that all citizens should be treated equally, exactly the same, regardless of their individual characteristics; the state should be neutral in dealing with its citizens. In recent years, political theorists such as Charles Taylor, Will Kymlicka, Yael Tamir, J. Raz, Iris Marion Young, and Anne Phillips have challenged both the practice and theory of the traditional view of citizenship. They argue that state neutrality has not been the case in actual practice; states discriminate in favour of dominant cultures. Furthermore they say such neutrality is, for a variety of reasons, impossible. They also argue that it is not desirable even in theory. An individual's culture is essential to their being and deserves to be positively recognized by the state.

This thesis argues that, while there are problems with the traditional view of a difference-blind citizenship and the idea of the neutral state, the philosophical arguments put forward by the critics are untenable. These arguments, and the political policies their implementation would entail, pose insurmountable problems for democratic deliberation and fail to take account of possible empirical results. The traditional view of citizenship and state neutrality can be rethought and implemented in what is called "the indifferent state"—a state which, while indifferent to its citizens' culture, religion etc., is not indifferent to the impact that these may have on the instantiation of such traditional liberal political values as equality and autonomy.

The thesis concludes with three case studies which illustrate the differences in approach between the traditional view of citizenship, the view of the critics, and that of the indifferent state.

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## 1.0 Introduction

### 1.1 Citizenship in Liberal Democracies

Since World War II, citizenship, both in the popular imagination and in contemporary Anglo-American liberal political theory, has generally been theorized of as something akin to 'membership' in a given political entity. The political entity, in practice almost always the nation-state, confers a certain collection of equal rights on all who share the status of citizen. Citizenship itself is often considered to be a right regardless of such individual characteristics as ethnicity, religion, mother tongue, or, provided certain minimum requirements are met, place of birth. In a 1991 study prepared for Multiculturalism and Citizenship Canada, William Kaplan stresses how the 1977 Canadian Citizenship Act:

...gave equal status to Canadians by birth and by choice, [and] established that citizenship was a right not a privilege.<sup>1</sup>

The notion that all citizens are in some way equal, regardless of their particular ascriptive characteristics or, within limits, their religious views, political or moral ideas, or social standing, is a second important strand in the modern idea of citizenship. Whatever particularities individual citizens or groups of citizens display, citizenship in a nation-state is generally seen as a way of conferring political or civic equality in the public sphere. T.H. Marshall, an influential post-war theoretician of citizenship, stressed this notion of equality:

...there is a kind of basic human equality associated with the concept of full membership of a community...of citizenship...which is not inconsistent with the inequalities which distinguish the various economic levels in society.<sup>2</sup>

Marshall argued that citizenship rights can be conceptualized as following into three distinct categories: (1) civil--the rights necessary for individual freedom, such as free speech, freedom of religion etc.; (2) political--the right to participate in the exercise of political power; and (3) social--the right to a modicum of economic welfare and security and the right to share in the social heritage of the nation.<sup>3</sup> Roughly speaking, the three categories of rights were introduced in England in a sequential fashion: civil rights in the 18th century, political rights in the 19th century, and social rights in the 20th century.<sup>4</sup> This evolution of citizenship was, in Marshall's view, "by definition national".<sup>5</sup> In summary, the traditional view of liberal democratic citizenship theorized it as the equal enjoyment by citizens of a collection of basic rights within and through a nation-state; very little was explicitly said about the individual characteristics

of the citizens in question.

Contemporary liberal political theory, which developed against the background of the above notion of citizenship, certainly took it as a given that citizens would differ in their religious and philosophical views of what constitutes a good life for themselves or for their fellow citizens. John Rawls, for example, in Political Liberalism, argues that contemporary democratic societies are characterized by such diversity; they are not "governed by a shared comprehensive religious, philosophical, or moral doctrine".<sup>6</sup> The likelihood that reasonable people will differ about such things is a staple of contemporary liberal doctrine. As Charles E. Larmore argues:

...we have come to recognize a multiplicity of ways in which a fulfilled life can be lived, without any perceptible hierarchy among them...even where we do believe that we have discerned the superiority of some ways of life to others, reasonable people may often not share our view.<sup>7</sup>

One important consequence of this view is the claim that the state should not promote or favour any particular religion or even religion in particular. Notwithstanding the fact that many contemporary democracies often do privilege, to some degree, a particular religion or religious denomination, and notwithstanding the fact that religious references and observances continue to be a staple of political discourse in some democracies, it is nevertheless fair to say that the separation of church and state is a central feature of liberal political thought.

Until relatively recently, linguistic, ethnic and cultural diversity was not widely addressed in mainstream liberal political theory. It was assumed, almost without acknowledging the assumption, that political societies are composed of citizens sharing a common language, heritage and culture. Rawls, for example, works out his ideas of justice as applying in:

...a complete and closed social system...complete in that it is self-sufficient...closed...in that entry into it is only by birth and exit from it only by death.<sup>8</sup>

Society is assumed to "possess a more or less complete culture".<sup>9</sup> While Rawls does not explicitly argue that "a more or less complete culture" is a homogeneous culture, this is the implicit assumption. Rawls does not discuss the implications of cultural diversity for his theory of justice.<sup>10</sup>

## **1.2 Statement of the Issue**

Very few countries are, however, culturally homogeneous in the sense of all citizens sharing a common language, religion or culture. Cultural diversity amongst individuals who share a common

citizenship is a fact. This is certainly true for states, such as Canada, Australia and the United States in which the indigenous peoples were overwhelmed by immigrants from a variety of cultural and linguistic backgrounds. It is also true for what have often been thought of as the uni-national nation-states of Europe. Even France, the traditional paradigm of the unilingual unicultural nation-state, was formed by people of widely different cultures. In addition to indigenous cultural and linguistic minorities, France is also a country peopled by immigrants, differing from the United States, for example, only in the fact:

...that the French social formation paradoxically combined a full-fledged nation (rooted in history, with a homogeneous population and a rigid political framework) with a history of self-induced massive immigration that fundamentally transformed the initial makeup of its population.<sup>11</sup>

Immigration of large numbers of culturally diverse people, driven by disparities in living standards between rich and poor countries or other reasons, continues to influence the cultural makeup of most economically developed liberal democracies.

Cultural diversity--where 'culture' denotes ethnicity, language, national origins, or some combination of these factors--is a brute fact of contemporary democratic life. It arises from immigration, or it can occur where more than one distinct cultural group has been incorporated into the same state.<sup>12</sup> Canada, Belgium, Switzerland, and Spain are examples of this. Cultural groups in these latter circumstances are often concentrated in geographically contiguous areas, where they may or may not form a majority, and where they may or may not control a political structure. They often maintain, or at least want to maintain, an identity separate from that of the other established cultural groups sharing the same state. Will Kymlicka uses the convenient terminology of "national minorities" in order to differentiate such groups from diversity brought about by immigration. Some theorists, however, take a broader approach to the question of what constitutes 'cultural' diversity. Iris Marion Young, for example, defines a social group as "...a collective of persons differentiated from at least one other group by cultural forms, practices or way of life".<sup>13</sup> Groups not included in Kymlicka's classification, groups such as gay men, lesbians, the disabled, the old, etc. may constitute social groups and contribute to cultural diversity under Young's classification. But, in addition to such cultural diversity, liberal democracies also harbour, as discussed above, diversity in the form of widely different views about personal, social and political morality--i.e., differences of viewpoint concerning what constitutes a good

life. Many such views are theistically or religiously based; others are not. As Kent Greenawalt argues:

...not all comprehensive views are religious...[they may also]...include overarching philosophies of life, whether religious or not...maximum happiness utilitarianism, standard Marxism, and Millian liberalism are nonreligious comprehensive views...<sup>14</sup>

Diversity of social and economic class is also a fact. While contemporary democracies exhibit different degrees of economic inequality, all harbour significant levels of inequality.

Contemporary liberal democracies are thus diverse and this diversity comes in many forms. The different types of diversity may, however, be grouped into three categories: first, there is a diversity of economic class and social status; second, citizens hold widely different religious and metaphysical views as to what constitutes a good or even an acceptable life; and third, states almost always include within their borders individuals of different linguistic and cultural backgrounds. It is evident, of course, that these three broad categories of diversity overlap. Individuals of the same cultural background may have different religious or metaphysical views; they almost certainly will differ as to their economic status. Or, as I will argue, cultural differences may, in fact, be partly or even largely religious differences. The challenge to political theory is to take note and account of those types of diversity which have normative worth and importance. Now, while the traditional view of citizenship, as put forward by Marshall, and contemporary liberal political theory as exemplified by Rawls and other egalitarian liberals, has much to say about differences in social and economic class--the remedy being some form of distributive justice--and about differences regarding religious and metaphysical views--the liberal doctrine of state neutrality is thought to address this--the third category of diversity--cultural and linguistic--has given rise to a sharp critique of traditional liberal citizenship theory. This critique focuses on the implicit linguistic and cultural homogeneity of the nation-state in which rights are exercised--i.e., on the assumption that all citizens do or should share a common national identity:

The question here is how, or whether, citizenship can provide a common experience, identity and allegiance for the members of society. Is it enough to simply include historically excluded groups in an equal basis, or are special measures sometimes required?<sup>15</sup>

It is the possible liberal responses to this latter question which is the focus of this thesis.

Various theoreticians have outlined different possible liberal responses to the fact of cultural difference. Joseph Raz, for example, identifies three possibilities: toleration, non-discrimination and the

affirmation of multiculturalism.<sup>16</sup> Toleration, as applied to questions of cultural diversity is, says Raz, the policy of:

...letting minorities conduct themselves as they wish without being criminalized, so long as they do not interfere with the culture of the majority.<sup>17</sup>

No concessions are made by the majority to facilitate the integration of minorities, and the state unabashedly represents the majority culture. For reasons of convenience or charity, it permits different cultural practices to exist. but it gives no public recognition to these differences. State institutions and symbols do not just happen to reflect the culture of the majority; this is one of their legitimate functions.

From the contemporary liberal perspective this approach, which may also be described as the "melting pot" or traditional "nation-state" model, has obvious difficulties. It omits any idea of state neutrality and makes no pretence, with regard to culture, language, and perhaps religion, of equal treatment for all. The state is the representative of one particular culture which is, implicitly or explicitly, portrayed as superior to all others. Toleration of this type means, according to Bernard Williams, "...only that one group as a matter of fact puts up with the existence of the other, differing group". It implies that:

If there is to be a question of toleration, it is necessary that there should be something to be tolerated; there has to be some belief or practice or way of life that one group thinks...wrong, mistaken or undesirable.<sup>18</sup>

The only choice a minority individual has if she wants to participate on an equal basis in the institutions of mainstream society is to give up whatever it is that the majority thinks is "wrong, mistaken or undesirable". A second possible position identified by Raz is nondiscrimination which is:

...based on the assertion of an individual right against discrimination on national, racial, ethnic, or religious grounds.<sup>19</sup>

This approach, he argues, is "a natural extension of the classical liberal conception of constitutional, civil and political rights"; it is also consistent with Rawlsian liberalism's position that "the principles used to justify political action should make no reference to any specific conception of the good life".<sup>20</sup> Under a regime of nondiscrimination:

...a country's public services, its educational system and its economic and political arenas are no longer the preserve of the majority but common to all its members as individuals.<sup>21</sup>

While this approach seems to be consistent with general liberal intuitions regarding equal treatment of individuals, difficulties arise when we turn from the general to the specific. What does nondiscrimination

mean in practice? Is it fair or just to treat national minorities in the same ways as immigrant groups? Do government policies which purport to treat everyone the same, regardless of cultural background, constitute discrimination against, or unequal treatment of, those citizens whose cultural backgrounds seem to require different treatment if they are to fully participate in the public aspects of society? Or does the fact that policies seem to treat everyone the same constitute equal treatment and nondiscrimination?

The response assumed by the traditional concept of citizenship, and until recently probably the dominant response in Anglo-American political theory, has been characterized by Kymlicka as 'benign neglect':

Many post-war liberals have thought that religious tolerance based on separation of church and state provides a model for dealing with ethnocultural differences as well...ethnic identity like religion is something which people should be free to express in their private life, but which is not the concern of the state.<sup>22</sup>

One interpretation of this position, an interpretation I will disagree with, holds that cultural particularities must be left behind when one enters the public arena, or at least that the public arena will not be modified to accommodate such differences. Iris Marion Young refers to this as the "assimilationist ideal" which:

envisions a society where a person's social group membership, physical attributes, genealogy, and so on, make no difference for their social position...Law and other rules of formal institutions will make no distinctions among persons...people might retain certain elements of group identity...But [this]...would be...a purely private matter. It would have no visible expression in the institutional structure of society.<sup>23</sup>

A central criticism of the 'benign neglect' model with its formal policy of state neutrality toward culture is the claim that, in reality, this neutrality is a fraud; even in immigrant societies the state inevitably favours the dominant group. Philip Petit summarizes this line of criticism as follows:

The main multicultural complaint is that the modern state is generally organized around presuppositions associated with one main-stream culture: it conducts its business in the language of that culture; it works via laws that may make sense only relative to the practices of that culture; and so on.<sup>24</sup>

Some theorists have also developed moral psychologies which purport to provide a basis for attributing special normative importance to an individual's own language and culture. This in turn justifies the claim that de facto dominance by one culture (because, of course, the benign neglect model presumably does not countenance any deviations from neutrality which are explicitly or legally justified on the basis of their uneven effects) is particularly egregious; hence it is necessary to reject benign neglect as an acceptable liberal ideal for dealing with cultural and linguistic diversity.

Because, these critics argue, the neutrality of the benign neglect model is a well-meaning fiction at best, or a conscious screen for majority culture domination and the forced integration of minority cultures at worst, and/or because their moral psychology pays special attention to culture, the benign neglect model of dealing with culture should be replaced by an alternative approach. They maintain that what is needed is a policy which, while not necessarily jettisoning the idea that the liberal state should be neutral between theories of the good, demands that it should be reinterpreted to mean, not the neglect of culture, but the recognition and support of the various cultures represented in the modern multicultural society. Where possible, they argue, cultural groups--national minorities in particular--should be permitted governmental structures to facilitate some level of self-government. Where this is not possible--in the case of immigrant groups dispersed throughout a state for example--the institutions and practices of the state should be modified as necessary to permit the full participation and inclusion of all groups. They argue that treating all individuals equally without taking account of their cultural background is to treat them unequally. Real neutrality means recognition and support for all cultures rather than their equal neglect. While there are wide differences between the different approaches argued for by the various theorists, I refer to all such positions by the name that Raz gives to his third option for dealing with multiculturalism--"the affirmation of multiculturalism"--and to their proponents as "affirmation theorists" or "Affirmationists".

The following chapters assess the relative merits of the latter two models of citizenship--benign neglect and affirmation of multiculturalism--for dealing with diversity. In particular, I address the issue of whether or not the criticisms by the affirmation theorists of the neutrality of the liberal state as theorized and practised, or their various moral psychologies, justify the replacement of the benign neglect model by the affirmation of multiculturalism. Or is it possible that the traditional model can be recast to give better answers to the criticisms offered by the Affirmationists, answers which better preserve the neutrality valued by liberal theory?

I argue that state affirmation and recognition of culture and language as such compromises the liberal ideal of state neutrality with regards to theories of the good and has the potential to undermine the separation of church and state. Furthermore, policies which attribute particular normative value to language and culture in and of themselves hinder the development of the deliberative aspects of liberal

democracy. One of my central contentions is that the Affirmationists have neglected the impact of the policies they advocate on these important aspects of liberal democracy. I also argue that careful reading of Affirmationist arguments allows them to be separated into two different general positions, the difference between which is essential for a proper assessment of the merits of their policy stances. One position, which is primarily driven by the empirical inequalities and discrimination based on language and culture that exist in liberal democratic societies, is in fact consistent with benign neglect as I interpret it; the other, driven by more theoretical considerations, is not. I will argue that a liberal polity, motivated by the theoretical arguments of Affirmationists of the second category, which rejects the ideal of benign neglect is inevitably put in the position of favouring one theory of the good over another, not simply in terms of some possible unintended outcome of a particular policy, but in the actual design and justification of citizenship policies. Thus, the Affirmationist state is inevitably forced into taking positions and involving itself in the religious lives of its citizens.

A central area of investigation to support the above claims is the relationship between what the Affirmationists designate as "culture" and the concept usually referred to as a "theory of the good" or a "comprehensive view". In pursuing this line of investigation, I explicitly address the analogy between culture and religion. Some Affirmationists simply deny the applicability of such a comparison, arguing that while neutrality between religions might be possible, the nature of culture is such that state neutrality is impossible.<sup>25</sup> I believe, however, that such a comparison, what David A. Hollinger refers to as "this heuristic exercise"<sup>26</sup>, is useful. Religion is often an integral part of culture; culture claims are very often claims for state recognition and support of specific religions. Religion and culture are not, as the Affirmationists would have us believe, separate concepts. Liberal theorists of affirmative multiculturalism, perhaps in unconscious deference to the origins of liberal toleration in the need to extricate the state from religious conflicts, or perhaps with the conscious knowledge that any acknowledgement of the role of religion in culture would undermine the liberal legitimacy of their arguments, have tended to play down the role of religion in the cultures to which they wish to give recognition. Contrary to Affirmationist arguments, culture and religion, culture and theories of the good, are concepts which overlap, often to a considerable extent. As Tariq Modood argues:

...the theoretical neglect of the role of religion reflects a bias of theorists that should be urgently remedied.

And what the affirmation of multiculturalism really requires is:

...a multiculturalism that...has space for religious identities.<sup>27</sup>

I argue that, given the importance of religion in many cultures, and given the overlap between culture, religion and theories of the good, if the notion of neutrality is to be re-interpreted in the manner proposed by the affirmation theorists--i.e., if benign neglect is replaced by an idea of state recognition and support for some or most cultures present in a society--the deliberative side of liberal democracy will be seriously compromised.

Given that the affirmationist project is incompatible with the fundamental liberal values of neutrality and public reason, and that multiculturalism is a fact of life for the modern democratic state, I outline a reinterpretation of benign neglect, one which takes account of and incorporates the insights of those Affirmationists who are motivated by empirical injustice rather than contestable theory. Liberal values are best instantiated in what I term the 'indifferent' state. Such a state should indeed "neglect" the cultural, ethnic and religious differences of its citizens; it would not neglect the effect such differences have on the lives of its citizens and on the instantiation of core liberal political values. I contend that the best moral psychology of citizenship is one which makes as few questionable psychological assumptions as possible. Put somewhat differently, the state should not concern itself with the psychological states of its citizens; a moral psychology appropriate for a liberal theory of citizenship must reject the idea of the state as a source of "recognition" or "self-respect". The state must be indifferent to all such pseudo-psychological justifications for its policies. Rather it should rely on the core values of political liberalism, justice and public reason which take for granted the equality of all citizens and their equal (potential) capacity to formulate comprehensive views and engage in political debate intelligible to all regardless of cultural heritage. Such a state is not indifferent to the just or equal treatment of its citizens, but assumes that such treatment can be defined and justified without reference to ethnic or cultural particularities. If, for example, a particular collection of citizens were suffering from injustice--discrimination or economic disadvantage for example--policies to rectify the matter would be justified by the fact of discrimination or economic disadvantage, not on the basis of cultural heritage, the time of their arrival in the country,

or the arrival date of their ancestors. The indifferent state does not concern itself with the survival or non-survival of any particular cultural group; it is indifferent to such matters.

### **1.3 Concepts and Definitions**

The concepts central to a philosophical discussion of citizenship issues--liberalism, multiculturalism, neutrality, equality, public reason, culture etc.--lend themselves to multiple interpretations. Often the meaning of the term is an important part of the philosophical issues at stake and the sense of it adopted by a given theorist is central to his or her argument. Here I limit myself to saying a few general words about liberalism, multiculturalism and culture; the sense I attach to the other concepts will form a central part of my arguments in the following chapters.

#### **1.3.1 Liberalism**

I understand liberalism in two different but compatible ways. First, it is a family of political philosophies with roots in such thinkers as Immanuel Kant and John Stuart Mill; the contemporary family is large and heterogeneous, encompassing modern welfare liberalism as theorised by such people as Rawls and Ronald Dworkin on the left and libertarianism exemplified by Robert Nozick on the right. What the family has in common is a belief in the moral value of the individual and his or her rights, freedom and well-being; where the family differs is with regards to the justification, meaning and implications of these things. In what follows, I make no attempt to rigorously follow any particular strand of contemporary liberal thinking; I do attempt to situate my arguments in the “mainstream” of this thinking which I take to be somewhat to the left of Nozick.

Perhaps more importantly I also use the term liberalism in a broader sense to refer to all theorists and theories which support what we call liberal democracy. Taylor and Young are not necessarily liberals, or at least may not think of themselves as such in the purely philosophical sense, but they are, I think, fairly categorized as liberals in this broader sense. Liberal democracy itself is the term I use to describe contemporary democratic governments. I assume we know one when we see one. Canada, France and post-Pinochet Chile are liberal democracies; the Peoples Republic of China, Iraq and Pinochet's Chile are not. While some governments may be difficult to categorize, most clearly are or are not liberal democracies in this sense.

### **1.3.2 Multiculturalism**

Multiculturalism has two different senses. At the level of political policies, it is the gamut of policies designed to promote, sustain and protect cultural minorities and cultural diversity. At the theoretical level, it is the position I have described above as "Affirmationist"--i.e., the attribution of particular normative worth and value to something called culture. It should be noted that it is at least theoretically possible to be a supporter of multiculturalism in the first sense without necessarily being a proponent of affirmationist theory; the reverse is probably not, however, possible.

### **1.3.3 Culture**

What culture is, what it comprises, or what it is comprised of is a major question which I address in Chapter 5. Here I will simply say what it is not. The French thinker Alain Finkelkraut in La défaite de la pensée calls attention to two different meanings of culture. He contrasts "la vie quotidienne a la vie avec la pensée".<sup>28</sup> The second sense of the term is loosely equivalent to what used to be termed "high culture"--the arts and sciences. Culture as I use the term in this thesis is definitely not this. It is rather "la vie quotidienne", the everyday lives of individuals including their language, customs, habits, and beliefs.

### **1.4 A Word About Method**

When I first began to think about the issues addressed in this thesis--multicultural diversity and its implications for public policy, public reason, and citizenship education--I believed it possible to take one or two basic principles of liberal theory, such as state neutrality with regard to theories of the good, and the idea of equal treatment, and construct a more or less comprehensive theory of citizenship which could then be applied to most or all the relevant issues. It was, in other words, my intention to take an approach roughly consistent with what David Miller describes as follows:

Usually the theorist will search for some fundamental principle which he or she believes lies behind all the more concrete beliefs and judgements that we express when we say that this or that action or practice is a fair or just one.<sup>29</sup>

While I remain convinced that certain key ideas and principles must remain central to any liberal attempt to justify political practice and theory, I do not now believe one can construct a logical and comprehensive theory which can be applied to any and all situations. Reality--both the complex reality of modern society and the equally complicated reality of our moral intuitions and beliefs--precludes the possibility of a theory which will fit all the circumstances all of the time.

Joseph Carens talks about differences in "philosophical style" rather than differences in philosophical method. He contrasts two approaches; the first thinks:

...of intellectual exchange on the model of a fight: you try to knock down my argument and I'll try to knock down yours...Our goal becomes constructing an airtight case, warding off or even submerging doubts, problems, and countervailing considerations...<sup>30</sup>

Rawls he argues, at least the Rawls of A Theory of Justice, exemplifies this approach. He:

...offers a model of political theory as an engineer's blueprint. He shows how something can be built from scratch...Every principle and argument is carefully related to every other one...the weight that each will bear carefully specified, and the entire foundation resting upon a foundation whose characteristics are essential to the success of the project.<sup>31</sup>

Carens contrasts this approach with that of Michael Walzer:

...which is more conversational. One has the sense that he is listening as well as speaking...Walzer takes positions--many of them controversial--and he offers reasons and arguments in support of his views. But his arguments are not, and I think not intended to be, knock-down arguments.<sup>32</sup>

Rather than offering us political theory modelled after an engineering blueprint, "Walzer offers a model of political theory as an impressionist painting of our moral landscape".<sup>33</sup> This is not to say that we are expected to take what people actually think about moral and political issues as definitive, but we must take it into account:

To see a landscape through a painting is not the same as to view it with the naked eye. The artist offers a reconstructive interpretation...Once we've seen the artist's painting, the landscape actually looks different to us, though in important ways what the artist sees was always already there.<sup>34</sup>

This second style of philosophy is much more influenced by history and context than is the more rigorous "engineering" style. As Walzer argues, political philosophy is not history or sociology, but:

Philosophy has to be historically informed and sociologically competent if it is to avoid bad utopianism and acknowledge the hard choices that must be made in political life. The harder the choices are, the less likely it is that one outcome and only one, warrants philosophical approval. Perhaps we should choose this way here and that way there, this way now, that way at some future time. Perhaps all our choices should be tentative and experimental, always subject to review or even reversal...We choose within limits.<sup>35</sup>

Political philosophy, practised in this style is pragmatic and flexible rather than doctrinaire and rigid. The issues cultural diversity raises for citizenship theory and practice in liberal democracies lend themselves to multiple approaches some of which are beyond the bounds of acceptable liberal democratic practice; but there remains, in most cases, a range of options which both are possible in the political and sociological sense of the term and normatively acceptable. None of the theoretical solutions however,

especially when translated into practice against the background of real functioning societies, is likely to be unambiguously attractive from the liberal democratic perspective. In the same way that a beginning student of economics learns that an economy can produce, at any given point in time, more guns but that this is achieved at the cost of less butter, political philosophers, at least those who take political theory to have practical import, need to acknowledge that historical, sociological and political realities constrain their ability to achieve a better--a more just--society. Political theories must take the imperfect realities of society and human nature into account. What would bring about a more just society in an ideal world may produce the exact opposite effect in reality; a policy to promote one liberal value may conflict with other equally liberal values. The recognition and state support of citizens' native languages--whether those of aboriginal peoples or those of immigrants such as Latinos in the United States--on the grounds that one's native language is a "primary good" in Rawls's sense, or that the preservation of one's native language is an inherent right, may very well result in citizens unequipped to function or participate in the societies to which they irrevocably belong. The opening of our national institutions, such as the Royal Canadian Mounted Police, to minorities by permitting religious symbols as part of the uniform may well be more inclusive but compromise at least the appearance of impartial and neutral justice. To quote Walzer again:

What is not possible...is to take all the "nicest" features of each of the different arrangements and combine them--under the assumption that because of their similar niceness (the appeal they have in our eyes), they will in fact fit together and make an effective and harmonious unity. Sometimes, at least, and probably very often, the things we admire in a particular historical arrangement are functionally related to the things we fear or dislike.<sup>36</sup>

We (political philosophers) must take fully into account the likely **consequences** of our theories and doctrines. To that end I will illustrate with concrete examples relevant to contemporary Canada the likely impact of various ways of approaching the issues raised by cultural diversity.

That said, how is one to choose amongst various principles and policies? Is it simply a matter of opinion or do we have a principled philosophical way for adjudicating between possibilities? I contrast and compare general models for responding to cultural diversity in liberal democracies; I address both the theoretical underpinnings and the likely consequences of these models. In order to conclude that one approach is normatively better than another, to argue that my conclusion is something other than simply

my personal opinion, the comparison must be made using a methodology which offers at least the possibility of objectivity. The dominant methodology in contemporary Anglo-American political philosophy is what Wayne Norman has called "Methodological Rawlsianism".<sup>37</sup> Methodology from this perspective is:

...both broad and informal. It includes conceptions of the object, presuppositions, context and rules-of-thumb of normative political theorizing. It is as much about attitudes as argument, as much about style as standards.<sup>38</sup>

Consequently, it is capable of incorporating the insights of Walzer regarding the importance of history and context without necessarily succumbing to his view that all principles of justice are relative to a given society. While all concrete political argument must address given circumstances and context, and while it must also be addressed to a specific audience, which may or may not coincide with a particular culture, nation or group, this is not, as Hilliard Aronovitch argues, inconsistent with the view:

...that various root values of the western, liberal tradition be regarded as objective moral truths, expressing interpretations of human life and worth that are deniable only by means of profound contradiction and misrepresentation...although all justifications may take us back to the particulars of one tradition or another, it is not the case that the traditions, especially as their implications are drawn out over time, are all on a par: we are not awash in a sea of relativism.<sup>39</sup>

Political philosophy, as practised by Methodological Rawlsians, is about institutions, practices, policies and laws; it is not about private actions or character.<sup>40</sup> And it is certainly not primarily about metaphysical or epistemic beliefs.<sup>41</sup> For political philosophy in general and theories relating to multicultural issues in particular, the fewer such theories and presuppositions lurking in the background the better; a theory of citizenship which makes fewer appeals to controversial metaphysical, psychological and epistemological premises is superior, in one respect at least, to one which relies heavily on such theories.

Methodological Rawlsianism is, says Norman:

...a conception of justification as a process of persuading others, and it is compatible with a variety of philosophical theories about the ultimate grounding of moral principles.<sup>42</sup>

Norman presents five "maxims" of methodological Rawlsianism: (1) Arguments should start from the widely accepted and proceed to the more specific;<sup>43</sup> (2) Controversial premises should be avoided;<sup>44</sup> (3) "Normative principles or theories...should be clear and specific enough to ensure that all careful reasoners with similar factual information could derive from them similar conclusions about the justice

of institutions and practices.";<sup>45</sup> (4) "Apart from empirical claims and 'background theories', the basic premises of normative political arguments are derived from intuitive considered convictions at various levels of generality, from general principles to particular judgements in particular cases..";<sup>46</sup> and (5) "Normative political principles are justified to someone to the extent that they are coherent with that person's convictions, background theories and beliefs about the world.";<sup>47</sup>

We can make no judgement about the normative worth of competing theories of citizenship unless we are able to foresee and compare the actual likely results of their application--i.e., their impact on the welfare--however defined--of living breathing women and men. As Brian Barry argues:

Principles are given content in the process of applying them to particular cases. Until we see how a principle would work out in a variety of cases, we can hardly be said to know what the principle is, so it does not make a lot of sense to assent to it.<sup>48</sup>

I will rely on examples of actual conflicts confronting multicultural democracies to illustrate the likely functioning of the two different citizenship models. To will the end is certainly, as Kant tells us, to will the means, but when the ends are sufficiently general and abstract--ends such as liberty, equality and justice for example--various interpretations of what the ends actually mean or can mean in a practical context, as well as various policy options for attaining them are possible. The general principles of equal treatment and equal moral status for all citizens are, if not universally accepted, at least generally accepted in contemporary liberal democracies. The interesting problems arise in the details of implementation.

### **1.5. Thesis Overview**

Given the methodological position just sketched – “political theory as an impressionist painting of our moral landscape” rather than “political theory as an engineer’s blueprint” – it is unfortunately inevitable that my arguments appear somewhat disjointed and unconnected. And to a certain extent they are. My objective is to compare and contrast two alternative liberal models for addressing cultural diversity in contemporary democratic states on different levels and from different perspectives. It is, therefore, useful to give the reader a brief overview of the arguments, and how they are meant to contribute to the construction of a coherent, if somewhat variable, model for a liberal democratic response to the brute fact of cultural, linguistic and religious diversity.

Chapters 2 and 3 outline the two main contending liberal stances: the state should adopt policies of benign neglect towards cultural difference; and the state should positively affirm and support the

various cultures present amongst its citizens. Chapter 2 discusses four justifications put forward to support the position that the state should attempt to remain above the cultural fray: (1) liberal legitimacy; (2) individual autonomy; (3) state neutrality; and (4) equality. I maintain that each of these justifications for benign neglect has merit, but that they also all present problems of interpretation and implementation. In different ways in fact, they all form part of the various arguments put forward by the alternative position. Chapter three presents the views of six prominent proponents of this alternative position. I argue that their rationales for the state affirmation of culture may be divided into two generic categories: first, that affirmation is necessary to overcome substantive inequality which arise between members of different cultural groups because of their membership in a particular cultural group; and second, that culture has a special normative importance and should be affirmed by the state irrespective of whether or not substantive inequality exists. I argue that the first category of cultural affirmation can be accommodated by a state practising benign neglect as I shall ultimately theorize it; the second category is indeed incompatible with such a policy stance.

Chapters 4, 5 and 6 evaluate the two alternative positions across three dimensions: moral psychology; a comparison between how states treat religious difference and how they should respond to cultural difference; and their potential impact on democratic deliberation. Chapter 4 addresses the moral psychology of citizenship. The central claim is that the Affirmationists rely on concepts of moral psychology—respect, self-respect, the need for ‘recognition’ by the state, dignity and autonomy—which cannot bear the weight the Affirmationist arguments put on them. If they could, there would indeed be a strong case for the state affirmation of culture; but they can’t. They are simply too general and too contestable to form the justificatory base for an inclusive politics.

Chapter 5 argues that culture, religion and the philosophical concept of a comprehensive view are overlapping concepts, that many (perhaps most) of the demands for cultural recognition are in truth demand for recognition of a particular religion, and that, excepting language, there is very little reason not to conclude that culture, religion and comprehensive views should be treated similarly, in theory and in practice. I then review the historical record in the United States and Canada, arguing that, at the level of practice and policy, state policies which approximate neutrality are both possible and desirable. The Chapter concludes with a discussion of the vexatious exception to this general conclusion, language: this

issue is developed further in Chapter 7.

Chapter 6 addresses the relationship between culture and democratic deliberation. I argue that 'restrictive' norms of public reason which rule out of bounds arguments based on religious or comprehensive views are untenable. Furthermore, when one takes into account the overlap between religion and culture, such a position has the added demerit of failing to take cultural difference seriously; it would, in fact, make it difficult for a democratic debate to be inclusive and to take account of the various perspectives, views and interest present in a particular society. In addition, cultural affirmation as theorized by those who hold that culture has a special normative value, would hinder democratic deliberation by raising culture and its implications to the level of a right which would, in effect, 'trump' other arguments.

Chapter 7 returns to the central issue: benign neglect or state affirmation of culture. It revisits the four liberal values put forward in support of benign neglect—liberal legitimacy, individual autonomy, state neutrality, and equality—and argues that these values, suitably interpreted and implemented do, in light of the arguments of Chapters 4, 5 and 6, support benign neglect as the better liberal policy stance. I develop the concept of an 'indifferent' state which is indifferent to its citizens' culture but not their well-being. The indifferent state avoids the contestable claims about moral psychology put forward by the Affirmationists, but it recognizes that, for most people, their language, religion and culture are important. Consequently, the indifferent state adopts a more flexible position on these issues than the traditional model of benign neglect. Citizens are assumed to, and encouraged to, pursue their cultural interests through the normal democratic process of debate and negotiation. The chapter concludes with discussions of three public policy issues—state symbols, language, and Aboriginal self-government—which demonstrate the different implications for public policy of benign neglect as traditionally theorized, cultural affirmation, and benign neglect as practised by an indifferent state.

### Notes

1 . William Kaplan, The Evolution of Citizenship Legislation in Canada (Ottawa: Multiculturalism and Citizenship Canada, 1991), 2.

2 . T.H. Marshall, Class Citizenship and Social Development (Garden City, New York: Anchor Books, Doubleday & Company Inc., 1965), 76.

- 3 . Ibid., 78.
- 4 . Ibid., 81-86.
- 5 . Ibid., 79.
- 6 . John Rawls, Political Liberalism (New York: Columbia University Press, 1993), 42.
- 7 . Charles E. Larmore, Patterns of Moral Complexity (Cambridge: Cambridge University Press, 1987), 43.
- 8 . Rawls, Political Liberalism, 40-41.
- 9 . Ibid., 272, footnote 9. See also John Rawls, A Theory of Justice (Cambridge [Mass.]: The Belknap Press of Harvard University Press, 1971), 457. Rawls here assumes that the boundaries of the just community "are given by the notion of a self-contained national community". In this, he follows Marshall in assuming a nation-state.
- 10 . See Will Kymlicka, Multicultural Citizenship (Oxford: Clarendon Press, 1995), Chapter 4; and Will Kymlicka, Liberalism Community and Culture (Oxford: Clarendon Press, 1989), Chapter 10 for discussions of this point. Kymlicka argues that this attitude of liberal theory towards the value for individuals of culture is a recent development dating, more or less from World War II. Earlier liberals, he argues, were fully cognisant of culture's importance. In Fred Bennett, "A Liberal Theory of Borders" (M. A. diss., University of Ottawa, 1996), Chapter II, I argue that the earlier liberal tradition, as well as contemporary liberal political theory, may be read as not giving explicit recognition to cultural difference.
- 11 . Gerard Noiriel, The French Melting Pot, trans. Geoffroy de Laforcade (Minneapolis: University of Minnesota Press, 1966), 258.
- 12 . See Kymlicka, Multicultural Citizenship, 18-19 for a discussion of the sources of diversity.
- 13 . Iris Marion Young, Justice and the Politics of Difference (Princeton: Princeton University Press, 1990), 43.
- 14 . Kent Greenawalt, Private Consciences and Public Reasons (New York, Oxford: Oxford University Press, 1995), 39.
- 15 . Will Kymlicka, Recent Work in Citizenship Theory (Ottawa: Multiculturalism and Citizenship Canada, 1992), 4.
- 16 . Joseph Raz, "Multiculturalism: a liberal perspective," Dissent (Winter 1994):68-69.
- 17 . Ibid., 68.
- 18 . Bernard Williams, "Toleration: An Impossible Virtue?", in Toleration. An Elusive Virtue, ed. David Heyd, (Princeton: Princeton University Press, 1996), 19.
- 19 . Raz, "Multiculturalism: a liberal perspective," 68.
- 20 . Ibid., 68-69.
- 21 . Ibid., 69.

- 22 . Kymlicka, Multicultural Citizenship, 3.
- 23 . Iris Marion Young. "Together in Difference" in The Rights of Minority Cultures. ed. Will Kymlicka (Oxford: Oxford University Press, 1995), 162.
- 24 . Philip Pettit, Republicanism (Oxford: Clarendon Press, 1997) 144. See also Kymlicka, Multicultural Citizenship, 114-115 for a similar argument.
- 25 . See, for example, Will Kymlicka, "The Sources of Nationalism (Commenting on Taylor)," in The Morality of Nationalism, ed. Robert McKim and Jeff McMahan (Oxford: Oxford University Press, 1997), 57-58.
- 26 . David. A. Hollinger, Post-Ethnic America (New York: Basic Books, 1995), 121.
- 27 . Tariq Modood, "Anti-Essentialism, Multiculturalism and the 'Recognition' of Religious Groups", in Citizenship in Diverse Societies, ed. Will Kymlicka and Wayne Norman (Oxford: Oxford University Press, 2000), 185.
- 28 . Alain Finkielkraut, La défaite de la pensée (Paris: Editions Gallimard, Collection Folio/Essais, 1987), 11.
- 29 . David Miller, "Introduction" in Pluralism Justice, and Equality ed. David Miller and Michael Walzer (Oxford: Oxford University Press, 1995), 1.
- 30 . Joseph Carens, "Complex Justice, Culture, and Politics" in Pluralism Justice, and Equality ed. David Miller and Michael Walzer, 46.
- 31 . Ibid., 47.
- 32 . Ibid., 46.
- 33 . Ibid., 47.
- 34 . Ibid., 47.
- 35 . Michael Walzer, On Toleration (New Haven and London: Yale University Press, 1997), 5.
- 36 . Ibid., 5.
- 37 . Wayne Norman, "'Inevitable and Unacceptable?' Methodological Rawlsianism in Anglo-American Political Philosophy", Political Studies XLVI(1998): 276-294.
- 38 . Ibid., 277.
- 39 . Hilliard Aronovitch, "The Political Importance of Analogical Argument", Political Studies XLV (1997): 89.
- 40 . Norman, "Methodological Rawlsianism", 280.
- 41 . Ibid., 278. I have argued elsewhere that Methodological Rawlsianism does lend itself to truth claims about political principles. See Fred Bennett, "William James, Truth, and Contemporary Political Philosophy", De Philosophia Vol. XIV, No. 1 (Spring-summer 1998): 39-61.

42 . Norman, "Methodological Rawlsianism", 280.

43 . Ibid., 283.

44 . Ibid., 284.

45 . Ibid., 284.

46 . Ibid., 285.

47 . Ibid., 285.

48 . Brian Barry, Theories of Justice (Berkeley: University of California Press, 1989), 263: quoted in Norman, "Methodological Rawlsianism", 284.

## **2.0 "Benign Neglect" and Liberal Citizenship**

In spite of its role in the literature as the preferred target of the Affirmationist critique of traditional citizenship, there is a remarkable shortage of explicit expositions of the theory and practice of such a policy stance. My goal in this chapter is to partially remedy this by setting out the liberal underpinnings of benign neglect. I begin by briefly reviewing views on how benign neglect is perceived as a general philosophical position. This is followed by a detailed critique of one recent attempt to ground the approach in four central liberal values: liberal legitimacy, autonomy, neutrality, and equality. I conclude that each of these values does in fact support benign neglect as the preferred liberal policy stance towards religion, language and culture, but that they need to be reconsidered in a more nuanced fashion which takes account of a polity's history and social circumstances.

Benign neglect in the face of diversity is often conceptualized as what Melissa S. Williams calls "equality-as-difference-blindness".<sup>1</sup> Citizenship is seen as the way to acquire the basic rights which Marshall described, it is, according to Dominique Schnapper:

...le moyen assuré d'acquérir un statut social, la condition nécessaire--même si elle n'était pas concrètement toujours suffisante--pour que l'individu puisse être pleinement reconnu comme un acteur<sup>2</sup>

On this view, citizenship is not tied to sharing the majority culture; its role is, in fact, to overcome and stand above such individual differences; it is:

...transcender...des appartenances particulières, biologiques (telles du moins qu'elles sont perçues), historiques, économiques, sociales, religieuses ou culturelles, de définir le citoyen comme un individu abstrait, sans identification et sans qualification particulières, en deca et au-delà de toutes ses déterminations concrètes...Le projet national est universel, non seulement en ce qu'il est destiné à tous ceux qui sont réunis dans la même nation, mais aussi parce que le dépassement des particularismes par la politique est, en principe, susceptible d'être adoptée dans toute société. L'universalité est l'horizon de l'idéologie de la liberté et de l'égalité postulée des individus, fondatrice de l'idée de nation.<sup>3</sup>

The modern citizen is defined:

...précisément par son aptitude à rompre avec les déterminations qui l'enfermeraient dans une culture et un destin imposé par sa naissance, à se libérer des rôles prescrits et des fonctions impératives. Ce qui fonde le principe--en même temps que les valeurs--de la nation démocratique, c'est l'opposition entre l'universalisme du citoyen et les spécificités de l'homme privé, membre de la société civile.<sup>4</sup>

Benign neglect may also be thought of as akin to what Michael Walzer describes as "Liberalism 1".<sup>5</sup> Walzer's Liberalism 2 by contrast:

...allows for a state committed to the survival and flourishing of a particular nation, culture, or religion, or of a (limited) set of nations, cultures, and religions--so long as the basic rights of citizens who have different commitments or no such commitments at all are protected.<sup>6</sup>

Liberalism 1 is, on the other hand:

...committed in the strongest possible way to individual rights and, almost as a deduction from this, to a rigorously neutral state, that is, a state without cultural or religious projects or indeed, any sort of collective goals beyond the personal freedom and the physical security, welfare, and safety of its citizens.<sup>7</sup>

Walzer himself does not necessarily favour liberalism 1; rather he sees it as only one of five possible policies for managing cultural diversity; it is appropriate in what he calls "immigrant societies" where:

...the members of the different groups have left their territorial base, their homeland, behind them; they have come individually or in families, one by one to a new land...they don't arrive in organized groups...<sup>8</sup>

Minorities are assumed not to be territorially concentrated and, with the exception of an officially sanctioned national language, all cultural groups are benignly neglected; the maintenance of cultural groups is a purely individual matter:

If ethnic and religious groups are to sustain themselves, they must do so now as purely voluntary associations. This means that they are more at risk from the indifference of their own members than from the intolerance of the others. The state, once it is pruned loose from the group of the first immigrants, who imagined in every case that they were forming a nation-state of their own, is committed to none of the groups that make it up. It sustains the language of the first immigration and, subject to qualification, its political culture too, but so far as contemporary advantages go, the state is, in the current phrase (and in principle),<sup>9</sup> neutral among the groups, tolerant of all of them, and autonomous in its purposes.

Benign neglect is, therefore, a policy stance a state may adopt in the face of cultural diversity. This state is, in Walzer's words, "a state without cultural or religious projects"; equality is, as Williams argues, conceptualized as "difference-blindness"; and the state should strive, to the extent possible, for rigorous neutrality. But does "difference-blindness" necessarily imply a policy of state ignorance of difference? I shall argue that this is not the case. The state neutrality which benign neglect requires is a form of neutrality of justification, but one which requires that the state be sensitive of the consequences of its actions. The underlying rationale of state action should be the universally applicable goals of liberal democratic citizenship—equality, inclusion, individual rights, etc.—not the promotion (or demotion) of any particular religion or culture. Policies so justified may well have consequences which are not neutral in their impacts on the fortunes of different cultures. On the other hand, the state may, may be required, to

take account of cultural differences if these differences are empirically related to the implementation of universal citizenship values. If, for example, individuals are deprived of their rights or suffer negative economic consequences simply because of their culture, then a just state must take account of such empirical realities in formulating policies.

It is my position that benign neglect, conceptualized in the manner just discussed, is appropriate not only for immigrant societies as Walzer argues. It is, from the liberal perspective, a normatively superior stance in the face of cultural diversity; it is congruent with and required by important liberal principles and values in general and by liberal concepts of public reason and the neutral state in particular. Given, however, the methodological considerations outlined in Chapter 1--i.e., liberal policies must take account of social reality and of the likely consequences of their implementation--the theoretical moral superiority of the policy of benign neglect does not necessarily imply that it should be mindlessly implemented by liberal democratic governments, without taking account of their own historical and social realities.

### **2.1 Liberal Justifications for Benign Neglect**

'Benign neglect', as either a philosophical position about the appropriate treatment of language and culture or an explicit policy stance, is not often explicitly argued for. The philosophical parameters implicit in the view are, however, supported by many contemporary liberals.<sup>10</sup> In addition, it is, as I have discussed elsewhere, plausibly the most compelling reading of the historical liberal tradition.<sup>11</sup> As we saw in Chapter I, modern theories of justice are not explicit about the cultural make-up of the political units in which justice is to be worked out. These theories are cosmopolitan in their outlook and theoretical underpinnings; they have difficulty in attributing particular normative value to ascriptive characteristics or linguistic and cultural differences. They imply, as Samuel Black argues, "the universal ascription of moral personality" which ascribes a moral personality to each individual:

The basic thought ...is that whatever their actual talents or achievements, and whatever their social status or communal affiliations, each individual is endowed with a certain set of morally important capacities, the possession of which entitles them to be counted as an equal in the design of just institutions.<sup>12</sup>

Contemporary theories of justice are an example of what Miller calls "ethical universalism". On this view it is "generic human capacities" rather than individual characteristics which are morally relevant.<sup>13</sup>

Because moral principles are universal in form, "only general facts about...individuals can serve to determine...duties towards them".<sup>14</sup>

Benign neglect is best described as a policy rather than a fundamental liberal principle. In making this distinction, I follow the distinction made by Ronald Dworkin.<sup>15</sup> A principle is:

...a standard that is to be observed, not because it will advance or secure an economic, political, or social situation deemed desirable, but because it is a requirement of justice or fairness or some other dimension of morality.<sup>16</sup>

A policy, on the other hand, is "that kind of standard that sets out a goal to be reached."<sup>17</sup> In my usage of the term, a policy may also include the implementation of a more fundamental principle. Principles "are propositions that describe rights, while policies are proportions that describe goals."<sup>18</sup> Principles are basic and may only be compromised when they clash with other equally important principles. policies, on the other hand, must be judged on how well they implement the goal in question. Benign neglect is the best way of instantiating in practice certain more basic liberal principles such as equal respect, equal treatment and public reason.

Harry Brighouse has provided an explicit description and defence of benign neglect. I will use his exposition to focus my discussion on the relevant issues. My discussion of Brighouse's defence of benign neglect in this chapter, in particular my discussion of the liberal justifications he offers for the position is not meant to be my final word on these important issues. My aim at this point is simply to identify the key values and assumptions that underlie the benign neglect model, and to show that, as presented by Brighouse, they do not provide the definitive liberal case for it that Brighouse supposes. I shall return to these issues in Chapters 4, 5 and 6 and ultimately argue, in Chapter 7 that the core liberal values in fact argue for my model of an indifferent state.

Brighouse argues that, while (all) national loyalties and cultural particularities should be tolerated, they should not be promoted by the liberal state; nor, presumably, should they be constitutionally recognized. Such feelings are private sentiments and belong to the private, non-public sphere; hence, they are irrelevant to the design of the basic institutions of society:

...they [cultural preferences and loyalties] should be tolerated by the state, but they should be tolerated in exactly the same way that our loyalties to our favoured cricket teams are tolerated--as the private loyalties of private citizens which have no business informing the design of social institutions.<sup>19</sup>

Underlying this position is a view of the proper scope and function of a liberal state. The state is separate from, but related to, both the individual and civil society. Brighthouse sees the state:

...as a corporate agent through which citizens carry out their obligations to one another...its coercive functions are so integral to its identity that even when it passes comment in a way that is neither coercive nor manipulative it will generally be easy for citizens to reasonably believe that coercion or manipulation is taking place.<sup>20</sup>

Brighthouse does not elaborate on the role of the state in a culturally diverse society; nor does he discuss the question of whether or not a policy of benign neglect would necessarily limit the scope of state activity. Other authors, however, have argued that a state which adopts a policy of benign neglect is not necessarily a weak or Nozickian minimal state. Judith M. Shklar, for example, argues that diversity necessitates a strong state:

A modern state...not only stands above the warring groups but exists to mitigate by lawful coercion the murderous proclivities generated by racial, ethnic, and religious solidarity. The strong state...not only protects, it encourages the freedom of the individual as well as of voluntary associations, but only as long as they submit to a single system of law equally applicable to all.<sup>21</sup>

The state must be strong enough to enforce the law in a fair and equitable manner and to provide the legal framework necessary for individual liberty. Its function is, as John Gray argues:

...first and last that of preserving liberty and civil association under the rule of law. The liberty that is preserved is that of the liberal individual, but it is a liberty that thereby guarantees cultural freedom--the condition in which individuals may opt to explore and in inherited form of life, or migrate across traditions to a chosen lifestyle, if they so wish...a form of government in which each person, and therefore also each cultural tradition which the society contains, possesses an equal freedom to develop themselves, compatible with the equal freedom of the others to do likewise.<sup>22</sup>

The state should hold itself aloof from the question of cultural flourishing; it should not adopt policies which are justified on this basis:

...the place of government is to respect diversity in cultural traditions, and so allow for the emergence of rival and perhaps incommensurable forms of human flourishing, but not to attempt to institutionalize traditions or ways of life in state-subsidized ghettos.<sup>23</sup>

Such a policy stance by the state offers no guarantees for the survival of any particular culture; on the contrary:

...if government is to shelter the variety of traditions which our society contains, then it should favour none of them particularly. This, in turn, implies that there is no guarantee that long-established traditions and forms of life will succeed in reproducing themselves.<sup>24</sup>

Most discussions of the role of the benignly neglectful state are abstract and ethereal; they tend,

as Gray does, to enunciate the state's role in very general terms--in terms, that is, which are more appropriate for principles than for policies. What, for example, does such a policy actually imply for such things as official language(s) policy, the setting of national holidays, education etc.? Affirmationists have talked a great deal in recent years about how what they call "the public sphere" can, by establishing holidays, language polices etc. have the effect of promoting one language or culture over another.<sup>25</sup> However, neither the Affirmationists nor supporters of benign neglect such as Gray or Brighthouse elaborate exactly what it means to talk about the "pubic sphere". Does it matter if the state takes no official position on language nor on which particular days should be considered holidays but rather leaves such matters to civil society to work out independently from state action? The practical result may well be the same--the favouring of one group's language, culture and religion over another's. What are possible principled liberal justifications for such a view of the state in a multicultural liberal society? Why should it not adopt policies that support cultural flourishing, promote a particular national identity, or aid threatened minority cultures to survive?

Brighthouse argues that benign neglect is supported by at least four principles central to contemporary liberalism. In the following paragraphs I outline these and why it might be argued that, taken singly or together, they make a liberal case for benign neglect. It must be noted, however, and this will become clear in Chapter 3, that the affirmationists often use different conceptions of these very same liberal concepts to make the case for state recognition and support for culture. It is often not the principles that are contentious, but rather what it means to implement them, what policies best instantiate the principles, and what specific trade-offs are necessary if the principles themselves point to conflicting policy choices.

### **2.1.1. Liberal Legitimacy**

Brighthouse first argues that benign neglect is a requisite for "liberal legitimacy". No liberal consensus exists on the issue, but it is generally agreed that a democratic state must exhibit certain features in order to be considered legitimate.<sup>26</sup> Legitimacy is conceptually separate from justice. Rawls's theory of justice, for example, contains two principles of justice. In addition, however, there is an additional constraint which must be satisfied for a just constitutional structure to be legitimate:

...our exercise of political power is fully proper and hence justifiable only when it is

exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason. This is the liberal principle of legitimacy.<sup>27</sup>

Brighouse characterizes the constraint in terms of a hypothetical contract:

...the consent requirement is usually spelled out in terms of some hypothetical contractual condition: the state has to be such that it would be endorsed by all reasonable and well-informed people who are interested in moral terms of association.<sup>28</sup>

This consent should be:

...robust against critical scrutiny. If it is the result of adaptive or accommodationist processes, or simply conditioned by manipulation or coercion by the state itself, it has no standing as actual consent...the consent should be such that if the citizen were to scrutinize it rationally and freely she would not revoke it.<sup>29</sup>

If special status were given to national sentiments, if they were considered to carry more moral weight than other citizen preferences, the consent formation process would be distorted, particularly if such privileging took the form of state policies glorifying or promoting loyalty to the existing state and its institutions.<sup>30</sup> This would constitute disrespect towards citizens not sharing the dominant view. The argument applies to all national and cultural sentiments, particularly those of the majority.

This view of liberal legitimacy is directly tied to the idea of public reason. Rawls puts the point as follows:

...since the exercise of political power itself must be legitimate, the ideal of citizenship imposes a moral, not a legal, duty--the duty of civility--to be able to explain to one another on these fundamental questions how the principles and policies they advocate and vote for can be supported by the political values of public reason. This duty also involves a willingness to listen to others and a fair-mindedness in deciding where accommodations to their views should reasonably be made.<sup>31</sup>

In a somewhat different formulation of the same idea, Jurgen Habermas argues that:

Just those action norms are valid to which all possibly affected persons could agree as participants in rational discourses.<sup>32</sup>

Rawls and Habermas disagree about the nature of the public reason that lends legitimacy to the liberal state. Rawls would limit the content of the discourse:

...in discussing constitutional essentials and matters of basic justice we are not to appeal to comprehensive religious and philosophical doctrines.<sup>33</sup>

Habermas, on the other hand, stresses the conditions under which a public debate takes place but is willing to accept all possible content:

..."rational discourse" should include any attempt to reach an understanding over

problematic validity claims insofar as this takes place under conditions of communication that enable the free processing of topics and contributions, information and reasons in the public space...

...it is important that we not limit a fortiori the kinds of issues and contributions and the sorts of reasons that "count" in each case.<sup>34</sup>

I shall argue in Chapter VI that Rawls's (and others') arguments for content restrictions on public reason are ultimately unsuccessful; if public debate is to fulfill the epistemological and legitimizing functions that theorists claim for it, it must be open to all societal opinions and perspectives.

Brighouse's argument emphasizes Habermas's view that the conditions of public discourse are compromised by state support for national identity and culture in two ways: first, the support by the state for a particular point of view about existing institutions, national history, etc. compromises "the free processing of topics and contributions, information and reasons in the public space"; second, those who hold opposing views will simply not have the resources necessary to compete with the official state-supported view. Brighouse's argument has merit: liberal legitimacy and public reason do require public discourse which is open, inclusive and not distorted by state support for some views and not others.

### **2.1.2. Autonomy**

Secondly, Brighouse argues that liberalism generally presupposes some ideal of personal autonomy.<sup>35</sup> This implies:

...that they..[individuals/citizens]..should have the opportunity to make..[important]..choices..in conditions where careful critical scrutiny over the range of options is a realistic possibility for them.<sup>36</sup>

While acknowledging that the importance (if any) of personal autonomy for liberal political theory is a matter of debate, Brighouse argues that, to the extent it is important, it argues against privileging cultural preferences. Granting special rights to national minorities may, for example:

...allow them to organize themselves in ways that violate the autonomy supporting rights of some members of the minority.<sup>37</sup>

Or, as Alan Patten makes the same point:

Le danger, c'est que toute tentative de reconnaître une identité quelconque fera surgir des idées et des discours particuliers sur la nature de cette identité, que tous les membres du groupe identitaire ne partagent pas nécessairement.<sup>38</sup>

Brighouse's argument here is empirical rather than conceptual: in some instances some cultural groups may use the support and recognition given by an affirmationist state to impose an essentialist view of

cultural identity on its members. The extent to which this occurs is a matter for empirical inquiry. It does raise the issue of where the "public" sphere ends and the "civil" or private sphere begins. Is the normative status of cultural repression practised internally by certain groups different if the groups receive some form of recognition by the state than it is in instances where there is no explicit recognition? Finally, is autonomy an integral and necessary part of liberalism as argued by comprehensive liberalism or is it simply another sectarian comprehensive view which must be treated as such by a state guided by political liberalism?<sup>39</sup>

### **2.1.3. Neutrality**

The third liberal principle which conflicts with the attribution of moral importance to national sentiments is, Brighouse argues, the principle of the neutral state. Neutrality is a central principle for most liberals; its nature, scope and application are, however, subject to a great deal of controversy. Peter Jones defines the liberal ideal of the neutral state as follows:

...A neutral state is one that deals impartially with its citizens and which remains neutral on the issue of what sort of lives they should lead...it is not the function of the state to impose the pursuit of any particular ends upon its citizens...the state should leave its citizens to set their own goals, to shape their own lives, and should confine itself to establishing arrangements which allow each citizen to pursue his own goals as he sees fit--consistent with every other citizen's being able to do the same.<sup>40</sup>

This view has deep roots in liberal political theory dating back to Kant.<sup>41</sup> In contemporary liberalism, the principle of the neutral state plays a central, if not uncontroversial role<sup>42</sup>. Even certain critics who would deny the claim that neutrality is "the principle of liberal society; or the principle which ought to trump all others whenever they come into conflict" do not deny the principle's importance.<sup>43</sup> Taylor, for example, acknowledges that neutrality:

...is clearly an important good, even indispensable, in certain contexts of the modern liberal state. For instance, these states are neutral between different religious confessions, and it is extremely important that they be so. They should aim to provide the maximum freedom for their citizens to search out and practise various models of the good life.<sup>44</sup>

I will not therefore attempt a justification of the principle; nor is it clear that a neutral justification of neutrality is possible.<sup>45</sup> My discussion is limited to liberal interpretations of the meaning and application of the principle, focussing on aspects that are relevant for the debate between supporters of benign neglect and Affirmationists.

It is important, according to Robert Goodin and Andrew Reeve:

...in assessing arguments about neutrality, to ask who or what is to be neutral, what they are supposed to be neutral about, and what objective their neutrality is supposed to secure.<sup>46</sup>

I would add that it is also important to ask how the principle is to be implemented: whether what counts for assessing the neutrality of an action, a law or a constitutional provision is the reason why it has been undertaken or whether what matters is the actual impact of the measure in question. Finally, we need to ask whether or not the principle of neutrality is an all or nothing proposition, or is it a principle that is implemented in degrees?

The first question--who or what is to be neutral--is usually answered by saying that it is the state and its agents which have the obligation to behave in a neutral manner. But there is a certain fuzziness about this answer. Goodin and Reeve argue that:

We are supposing a distinction between state and society. Liberal theory has traditionally demanded neutrality of the first, but not of the second.

...when society is contrasted with the state, the latter term standardly refers to political mechanisms for dealing with competing claims; again the prescription of neutrality concerns just how these claims are treated.<sup>47</sup>

Where the realm of the state leaves off and that of society--civil society--begins is often not specified with any exactness in discussions about neutrality. Most contemporary democratic societies have mixed economies. Governments are actively involved, directly and indirectly, in many areas of society. Is neutrality required of all institutions owned and controlled by the state? Or, alternatively, what are the implications for the principle of neutrality if non-neutral policies are pursued by privately owned and controlled institutions which exercise quasi-public power the exercise of which is, in turn dependent on state power. I am thinking here of such organizations as private residents' associations, condominium corporations etc., which often provide services which in other cases are publicly provided and whose legal power to exist is provided by state enforcement of private contract, property laws etc. Are these sorts of institutions required to be neutral in some way or other?<sup>48</sup> One school of legal thought--legal realism--argues that often actions by such entities must be counted as state action. According to Nomi Maya Stolzenberg:

With regard to [the question of what counts as "state action"], legal realism assimilates private rights to public authority both by recognizing that regulative or coercive effects can occur in the private realm, and by revealing that in some cases, public action may actually be involved in, or responsible for, private action, and vice versa.<sup>49</sup>

If it is the state which must be neutral, we need to be precise about what counts as state action and what is simply the result of the free play of society governed by neutral, state-set laws and regulations. In the end it may turn out to be the case that one's view of exactly what societal institutions must be neutral is dependent upon one's prior intuitions and beliefs concerning the appropriate scope of state action.

If it is the state and its agents, however defined, which must be neutral, what is it that they are supposed to be neutral about. The usual response is "theories of the good", "comprehensive moral views" etc., with religion considered the paradigm example. This is summarized by Pierre-Yves Bonin as follows:

La règle de neutralité exige que l'Etat, par ses politiques et ses représentants, s'abstienne de prendre parti en faveur de l'une ou l'autre des conceptions du bien des citoyens et ne cherche par conséquent d'aucune façon à encourager un mode de vie plutôt qu'un autre.<sup>50</sup>

...une conception du bien est une façon articuler les valeurs que donnent un sens à notre vie.<sup>51</sup>

Rawls provides a relatively clear explanation of what he considers a comprehensive view of the good to be--about which the state should be neutral--when he contrasts it with the political conception of justice, about which the state should not be neutral; he is worth quoting at length:

...the distinction between a political conception of justice and other moral conceptions is a matter of scope: that is, the range of subject to which a conception applies and the content a wider range requires. A moral conception is general if it applies to a wide range of subjects, and in the limit to all subjects universally. It is comprehensive when it includes conceptions of what is of value in human life, and ideals of personal character, as well as ideals of friendship and of familial and associational relationships, and much else that is to inform our conduct, and in the limit to our life as a whole. A conception is fully comprehensive if it covers all recognized values and virtues within one rather precisely articulated system; whereas a conception is only partially comprehensive when it comprises a number of, but by no means all, nonpolitical values and virtues and is rather loosely articulated. Many religious and philosophical doctrines aspire to be both general and comprehensive.<sup>52</sup>

Conceptions of the good thus include such fully worked out world views as those put forward by major religions as well as non-religious philosophical positions such as utilitarianism and, perhaps, liberalism itself. But a conception of the good need not, according to some theorists, be anything quite as formal as a recognized philosophical or religious system. Jeremy Waldron refers to an individual's conception of the good life as:

...a plan or a strategy for living that an individual uses as a basis for making and reflecting on her morally important decisions...[it]...defines for her the things that are most, and least, important in her life.<sup>53</sup>

And Jones goes so far as to "include all those things that we ordinarily dub a person's preferences".<sup>54</sup>

Most discussions of state neutrality do not discuss the question of an individual's language and culture and how these should figure, if they should figure at all, in the idea of neutrality. Brighthouse simply assumes that language and culture are sentiments or preferences that are, following Jones, encompassed in the idea. Accordingly state support of any national sentiment, especially that of a cultural majority contradicts neutrality:

Citizens [in a polity characterized by cultural diversity] will be loyal to different nations and will have different levels of loyalty toward their nation, and some will have no loyalty at all. To make decisions about institutions which deliberately favour the sentiments of some rather than others on the grounds that the loyal citizen's sentiments are superior would be disrespectful toward the disloyal or indifferent citizen.<sup>55</sup>

Providing special rights to minorities also violates the neutrality constraint, if such a policy is justified by reference to the special importance and moral worth of national sentiments or cultural preferences. Self-government rights for national minorities imply that their preference for autonomous government carries more weight because it is motivated by culture than would a similar desire for self-government by groups whose preferences were based on other (political or regional sentiments for example) considerations.<sup>56</sup>

There is, however, something quite wrong about Brighthouse's argument. Neutrality is not generally conceived of as applying to any and all preferences as Jones claims. Much legitimate government policy will be, in fact, the fulfilment of preferences which are held by some citizens and not by others. The fact that a majority wants (has a preference for) the government to construct a swimming pool rather than a hockey arena, and the government therefore does so, cannot, in my view, be construed as a meaningful violation of neutrality. Nor, as far as that goes, does a decision to support opera rather than rap music qualify.<sup>57</sup> It would reduce the idea of neutral state to that of a Nozickian minimal state to accept that governments may not adopt policies which are neither justified as fulfilling the preferences of the majority nor which give actual effect to the majority's desires. My argument will assume rather that the liberal position on neutrality relates to neutrality between comprehensive theories of the good broadly conceived to mean general moral and philosophical positions and ways of life with religion as the paradigm. From this perspective. Brighthouse's argument fails; it is not clear on his account that state support for cultural preferences is in some way non-neutral between theories of the good. If cultural preferences, or language and culture themselves, can be demonstrated to be something other than a view of the good life, then state support is quite acceptable (although not necessarily required). However, I will argue in Chapter

V that cultures, theories of the good and religious views are overlapping concepts; their overlap may often make state support a violation of the neutrality constraint.

Why we think neutrality important is itself an important issue. According to Waldron:

Different lines of argument for the liberal position will generate different conceptions of neutrality, which in turn will generate different and perhaps mutually incompatible requirements at the level of legislative practice. Since we cherish our deep values and our justificatory arguments much more dearly than we cherish any particular posited conception of neutrality, it will be the justification we favour which determines our interpretation of the concept, rather than the other way around.<sup>58</sup>

Kant argued for neutrality on the grounds that:

Men have different views on the empirical end of happiness and what it consists of, so that as far as happiness is concerned, their will cannot be brought under any common principle nor thus under any external law harmonising with the freedom of everyone.<sup>59</sup>

Man's freedom as a human being, as a principle for the constitution of a commonwealth, can be expressed in the following formula. No-one can compel me to be happy in accordance with his conception of the welfare of others, for each may seek his happiness in whatever way he sees fit, so long as he does not infringe upon the freedom of others to pursue a similar end which can be reconciled with everyone else within a workable general law...<sup>60</sup>

Kant specifically warns against the idea of a "paternal government" which, he says, "is the greatest conceivable despotism".<sup>61</sup> Kant grounds his position on the a priori principle of "the freedom of every member of society as a human being".<sup>62</sup> Dworkin's justification for neutrality relies, on the other hand, on the fundamental principle of "equal concern and respect".<sup>63</sup> Kymlicka finds its importance in the idea of personal autonomy. But autonomy and freedom are specifically (comprehensive) liberal values; if neutrality finds its justification on these specifically liberal grounds its policy prescriptions will be justified on the basis of a particular comprehensive view and will automatically lead to the non-neutral treatment of non-liberal views.<sup>64</sup> Political liberalism, on the other hand, sees neutrality as justified by the more practical concern that it is the only way of dealing with the brute fact of the pluralism of comprehensive views that exist in contemporary liberal democracies. This view is supported by one view of history. As Weithman puts it:

According to one standard version of the history of political thought, liberal philosophy was conceived in reaction to the wars of religion. It was premised on the supposition that religion poses a threat to political stability and so early liberal theorists attempted to isolate common moral principles which could serve as the basis of government.<sup>65</sup>

This is certainly Rawls's current position.<sup>66</sup> Contemporary society is irredeemably divided "by a pluralism

of incompatible yet reasonable comprehensive doctrines."<sup>67</sup> Hence, in such a society, state neutrality, is the only position that has the possibility of attracting widespread support. A state which supports one particular view of the good (which I will argue includes culture) will be viewed as coercive and will lack legitimacy among some segments of the population. It will be seen as failing to treat some of its citizens with reasonable respect. It is this latter view of neutrality's justification that accounts for political liberalism's support for neutrality; this is also Brighouse's position:

If we accept...the fact of reasonable pluralism...then we should be concerned that the state not presume the falsehood or wickedness of the deepest moral commitments of its reasonable citizens. As a holder of a monopoly on legitimate coercive force, and as a mechanism which is supposed to be accountable to all citizens, the state should pass as little comment as possible on the content of the ways of life of its own citizens.<sup>68</sup>

Non-neutrality on the part of the state is thus "...an unwarranted sign of disrespect to the person whose views are being disregarded".<sup>69</sup> Neutrality, as theorized and justified, is thus grounded by the sociological fact of a pluralism of reasonable views--i.e., it is viewed as the position most likely to permit the stable functioning of a society--and by the view that the state owes equal respect to all reasonable views of its citizens. Proponents of this view must, however, be mindful of the fact that the very idea of a 'stable' society may conceal a hidden objective of dominance by the cultural majority; it may be that the objective of societal stability may simply be another way of saying that minorities should remain quiet, quiescent and out of sight.

One of the most important issues which surround the question of state neutrality is how one is to judge whether or not a particular item is neutral. Political philosophers distinguish two basic possibilities: neutrality of outcomes or consequences and neutrality in the way policies, actions etc., are justified.<sup>70</sup> Consequential neutrality requires that state action neither privilege nor disfavour any particular comprehensive view. This view of the question is generally rejected as impractical if not impossible. Most state actions, or lack thereof, will serve to favour one way of life over another; it is also difficult or impossible to forecast what the impact of any particular policy will turn out to be. Furthermore, there is, as Waldron argues, a theoretical difficulty; consequential neutrality:

...involves the postulation of some baseline relative to which differential effects of legislation or other state action must be measured.<sup>71</sup>

The interpretation of neutrality as neutrality of consequences is not, therefore, the interpretation of most

liberals who support the principle; but it is often the target, stated or implied, by those who argue that neutrality is an "illusion".<sup>72</sup>

The alternative approach--justificatory neutralism--argues that:

...un Etat est neutre si ses interventions sont motivées par une justification qui reste neutre a l'égard des différentes conceptions du bien des citoyens. Peu importe les effets que ces interventions peuvent avoir sur certaines conceptions du bien, l'essentiel est que les raisons invoquées pour justifier ces interventions n'impliquent pas une intention de favoriser une ou certaines de ces conceptions.<sup>73</sup>

This interpretation requires only that state actions be justified by morally neutral values.<sup>74</sup> This view closely links the idea of state neutrality to that of public reason. As Bruce Ackerman argues:

...consequences do not speak for themselves. Only people talk...it is the way they talk that determines the legitimacy of their political decisions. Of course, in talking to one another in defence of competing substantive rules, people may well want to appeal to the desirable consequences to justify the public adoption of one or another rule. But it is the way they try to bring these consequences into the justificatory conversation that determines whether their appeal to consequences offends Neutrality.<sup>75</sup>

As Bonin points out, however, there is no agreement about what constitutes a neutral value to which a justificatory appeal may legitimately be made.<sup>76</sup> For Rawls and Kymlicka, for example, a neutral value is one which is compatible with the realization of all comprehensive views;<sup>77</sup> Dworkin postulates justice as the only neutral value while Larmore proposes values which are supported by a general societal consensus.<sup>78</sup>

Justificatory neutrality thus seems to merge with public reason. As I will discuss in Chapter VI, it is a vexed question whether or not a coherent position on public reason is possible and whether or not questions of language and culture play a role. If public reason is some form of citizen dialogue, does it require a single language? Is there a neutral justification for selecting one language as opposed to another?<sup>79</sup> I will leave this issue to later chapters except to here note that if benign neglect is to be considered the normatively superior policy for implementing liberal principles, this question must be addressed in some detail.

The final important issue about neutrality is whether it is an "all or nothing" concept: should the fact that an ideal version of neutrality cannot, in practice, be implemented require that the principle be jettisoned? Goodin and Reeve state the reality in the following terms:

...neutrality, whether at the level of the disposition of a particular agent...or at the level of an institution...are at the level of a practice...is likely to be a matter of degree...seems

obvious that more neutrality is better than less...<sup>80</sup>

Goodin and Reeve appear to be referring primarily to consequential neutrality; it is not clear, however, what this means for justificatory neutralism. They go on to say:

If a particular individual has received non-neutral treatment it seems a poor response to say that the system which so treated him is more neutral than others...From the individual's point of view, neutrality is an all-or-nothing matter,<sup>81</sup>

It seems an even poorer response to say that the justification for the system is neutral even if the consequences are, perhaps consistently, non neutral. Any system, constitution or government policy initiative will inevitably appear to be non-neutral to many individuals and groups. It is also unclear about how one can assess whether or not a particular policy or action was justified in a morally neutral manner. What would count as evidence one way or the other if one undertook such an investigation? Is it the justifications in the minds of the legislators who actually voted in favour of an item that are relevant? Or is it the arguments they actually put forward? What if the legislators' justification were simply that such a policy would be popular--i.e., they justified it by a desire to be re-elected? Given that most legislation, including basic constitutional documents, arises out of a clash of political interests is there really anything at all that can count as "the justification".<sup>82</sup> A viable concept of neutrality requires that we decide whether or not, at the level of justification, partial application is better than no application at all.

I began this section with five questions about the concept of neutrality: Who or what is to be neutral? What are they supposed to be neutral about? What objective is their neutrality supposed to secure? Should neutrality be interpreted as requiring neutrality of impact or neutrality of the justifications offered for a policy? And finally, is the principle of neutrality an all or nothing proposition, or is it a policy that is worth implementing in degrees? As my discussion indicated, none of the questions admit to a single uncontroversial answer. With regard to who is to be neutral, the usual response is the state. This view takes the state as separate from civil society, but the precise line of division between the two is not clear. Even when limited to the state, it seems to be self-evident that not each and every part of the state apparatus can be neutral about each and every decision. I will further address this point in Chapter 7. The second question--what the state is to be neutral about--elicits the response that it should be neutral about comprehensive views or theories of the good, with religion seen as the paradigm example of what a theory of the good or a comprehensive view looks like. The role of language and culture in a

comprehensive view or a theory of the good, is however, a vexed question. I take up this issue in Chapter 5. The third question—why we value neutrality—also calls forth multiple answers. Kant grounds his position in the a priori principle of freedom; Dworkin’s justification is the fundamental principle of equal concern and respect; and Kymlicka looks to autonomy. Political liberals, on the other hand, see neutrality simply as a pragmatic response to the brute fact of pluralism. I will further address some of these issues in my discussion of moral psychology—Chapter 4—and again in Chapter 7. To the fourth question, neutrality of justification versus neutrality of impact, I replied that neutrality of impact is simply unworkable but that justificatory neutrality is not problem free either. Given the close relationship between justificatory neutrality and public reason, these issues will be further addressed in Chapter 6. The final issue concerning neutrality—partial neutrality is better than no neutrality versus the view that it must be all or nothing—is a question which lies at the heart of my concept of an indifferent state; I will take up the discussion in Chapter 7.

This concludes my discussion of state neutrality as an important liberal principle, a principle the implementation of which serves as an important justification for a policy of benign neglect. It is a principle which is supported by many liberals; but, as I hope the preceding discussion makes clear, the justification and implementation of neutrality, especially as it applies to questions of language and culture, is not as simple or self-evident as Brighouse appears to think. One cannot simply move from the general principle of neutrality to its specific application in the form of a policy of benign neglect to questions of language and culture. As Brighouse notes, neutrality is not a foundational principle for liberalism; rather it emanates:

...from the more foundational value of respect for persons. Neutrality is one among several values to be applied at the point of institutional design, and a defensible theory of neutrality would tell us exactly how to balance it against other values.<sup>83</sup>

#### **2.1.4. Equality**

The fourth liberal principle which Brighouse advances in support of benign neglect is equality. Most contemporary egalitarian liberals support some form of Rawls's difference principle which, in turn, is based on the premise that distribution of society's benefits and burdens should be independent of morally arbitrary personal characteristics. Brighouse argues, correctly, that national membership is largely

arbitrary:

... We did not choose our nation from a range of serious options any more than we choose our race or sex, or the class position of our parents. It seems arbitrary to allow national membership to affect our prospects, and this arbitrariness seems objectionable when it is feasible to design institutions or promote policies which will ameliorate the effects of national membership on our life prospects.<sup>84</sup>

Brighouse is clearly taking the terms nation and national membership as synonymous with cultural group and membership in such a group rather than as legal terms referring to a state and legal citizenship. He argues that a non-neutral approach by the state in favour of the majority cultural group in a state is normatively offensive in two ways. First, a policy promoting the worth, flourishing or survival of the culture of the majority may undermine the self-respect of members of cultural minorities and thus render them "less capable than others [members of the majority cultural group] of taking advantage of opportunities which are formally available to all".<sup>85</sup> Second, promotion of the majority culture may have a negative impact on the potential well-being of certain members of the majority itself:

... within the majority national identity people who are already less advantaged than others will be made more manipulable by those who are more powerful within the nation.<sup>86</sup>

Special rights for minorities also offend the liberal principle of equality; encouraging and promoting minority groups to raise their children in their national language may subsequently limit the children's opportunities:

... children growing up as monolingual speakers of a minority language are usually at a tremendous disadvantage as against children growing up speaking a majority language.<sup>87</sup>

Brighouse's claim that an affirmationist policy offends against liberal equality has merit. Nevertheless it requires a more nuanced defence than he presents. Equality is a fundamental liberal principle. It would be difficult indeed to find a contemporary liberal who would not argue for equality of something or who would mount a defence of the idea that individuals are inherently unequal. But, as with the principles of liberal legitimacy, autonomy and neutrality the devil is in the detail: equality defined and implemented in what way?

Legal equality has traditionally been interpreted to mean that all citizens are strictly equal in terms of their legal status and rights, however these are defined in a particular society; no one may claim a right to exemption from the law or special treatment under the law on the grounds that he or she is in some way of more importance or worth than other individuals. According to Holmes:

All classical liberals acknowledge that the tenet of equality before the law is an uncompromisable moral principle...the ethical centre of liberalism: [is that] each citizen must play by the rules that apply equally to all...Not allowing self-exemption is a norm of reason in this sense: no individual can provide a reason why he should be exempted from general laws that could not, with equal plausibility be invoked by any other individual.<sup>88</sup>

But this view of equality is strictly formal and requires more content. To paraphrase a well-known argument, is the idea of equality before the law vindicated or violated by a law that prohibits rich and poor alike from sleeping under a bridge?

Dworkin attempts to flesh out the concept of equality by specifying two separate rights contained in the concept and which individuals have:

The first is the right to *equal treatment*, which is the right to an equal distribution of some opportunity or resource or burden. Every citizen, for example, has a right to any equal vote in a democracy... The second is the right to *treatment as an equal*, which is the right, not to receive the same distribution of some burden or benefit, but to be treated with the same respect and concern as everyone else...In some circumstances the right to treatment as an equal will entail a right to equal treatment, but not by any means in all circumstances.<sup>89</sup>

Many governmental actions imply a differential distribution of burdens and benefits. This is especially true for policies relating to language and culture. Affirmationist policies imply one distribution while a policy of benign neglect implies another. These burdens and benefits may include, as Brighthouse argues, such things as the ability to take "advantage of opportunities which are formally available to all", the unequal future prospects of monolingual minority language speakers, and the relative power positions of individual members of a cultural majority.

Dworkin argues that "the right to treatment as an equal is fundamental" while the right to equal treatment is derivative.<sup>90</sup> An individual's right to equal treatment requires that any undue burden or loss that she incurs must be taken into account; it is possible, however, that this burden or loss may be offset by a greater gain to other individuals or to society taken as a whole. The right to treatment as an equal--fundamental on Dworkin's account--requires only that such differential burdens be taken into account in an equal manner. There is a right to equal treatment only in those fundamental matters in which there may be deemed to be a right to such treatment--voting as noted above, other basic rights and liberties, and perhaps a right to a certain level of economic support. Dworkin argues that a liberal theory of equality requires that treatment as an equal requires that the state not take a position on what constitutes the good life for its citizens; it must, in other words, be neutral precisely in order to treat citizens as equals:

...the government does not treat them [citizens] as equals if it prefers one conception to another, either because the officials believe that one is intrinsically superior, or because one is held by the more numerous or more powerful group.<sup>91</sup>

Thus neutrality is viewed not as a fundamental liberal principle, but as one derived from the foundational right to treatment as an equal; non-equal treatment violates the foundational principle of treatment as an equal only if it constitutes a violation of some fundamental right which may not be overridden on utilitarian or policy grounds. It is not necessary to accept Dworkin's specific rendering of why individuals have certain inviolable rights grounded in the right to treatment as an equal or what these specifically are. Other theorists--Rawls, Kymlicka etc.,--have proposed other positions. But what is necessary, and what Brighouse does not provide, is any account of why affirmative cultural policies fall into the general category of rights violating actions. His argument, for example, that state promotion of the majority national identity undermines minority self-respect and thus inhibits their ability to take advantage of generally available opportunity works only if (1) there is a general right for each and every citizen to have his or her self-respect protected from any and all possible infringements irrespective of general social welfare; (2) promotion of the majority culture actually does, as a matter of empirical fact, do this; and (3) if one and two are true we have an answer to the question as to why these effects cannot be off-set by affirming any and all minority cultures as well as that of the majority? It is also very possible, of course, that if one and two are true, in situations where there is a strong and vibrant majority culture, the minority may suffer a violation of their rights without any specific action by the state--i.e., benign neglect will produce the same results. Unless we have a clear account of the precise content of the right, we are not in a position to assert a violation.

This completes my exposition of benign neglect. I have chosen Brighouse's account as the framework for the discussion because it is a relatively recent coherent attempt to present and defend the policy position in a liberal context. I have been critical of many of Brighouse's arguments not because I disagree with them--on the contrary, I am generally in agreement--but because I don't believe they are adequate to make the philosophical case. Benign neglect is the policy which best implements liberal principles of legitimacy, neutrality and public reason, but both the philosophical issues and social reality are complicated.

### Notes.

- 1 . Melissa S. Williams, "Justice Toward Groups", Political Theory 23/1 (February 1995): 67.
- 2 . Dominique Schnapper, La Communauté des citoyens (Paris: Gallimard, 1994), 14.
- 3 . Ibid., 49-50.
- 4 . Ibid., 92.
- 5 . Michael Walzer, "Comment," in Multiculturalism and "The Politics of Recognition", ed. Amy Gutman (Princeton: Princeton University Press, 1992), 99-103.
- 6 . Ibid., 99.
- 7 . Ibid., 99.
- 8 . Michael Walzer, On Toleration (New Haven and London: Yale University Press, 1977), 30.
- 9 . Ibid., 31.
- 10 . The most cogent defence of a philosophical position denoted as benign neglect that I have been able to find is that of Harry Brighouse "Against Nationalism," in Rethinking Nationalism, ed. Jocelyne Couture, Kai Nielsen, and Michael Seymour (Calgary: University of Calgary Press, 1998), 365-405.
- 11 . Fred Bennett "A Liberal Theory of Borders" (M.A. diss., University of Ottawa, 1996), Chapter II. My reading of the tradition is in opposition to Kymlicka's contrary reading in Liberalism Community and Culture, 206-219.
- 12 . Samuel Black, "Individualism at an Impasse," Canadian Journal of Philosophy 21/3 (September 1991): 350.
- 13 . David Miller, On Nationality (Oxford: Clarendon Press, 1995), 50.
- 14 . Ibid., 50.
- 15 . Ronald Dworkin, Taking Rights Seriously (Cambridge: Harvard University Press, 1977), 22-28, 90-100. The viability of Dworkin's distinction, at least as it relates to legal interpretation is questioned in Richard A. Posner, The Problems of Jurisprudence (Cambridge and London: Harvard University Press, 1990), 22-23.
- 16 . Dworkin, Taking Rights Seriously, 22.
- 17 . Ibid., 22.
- 18 . Ibid., 90.
- 19 . Brighouse, "Against Nationalism", 366.
- 20 . Ibid., 371.
- 21 . Judith M. Shklar, "The Work of Michael Walzer," in Judith M. Shklar, Political Thought & Political Thinkers, ed. Stanley Hoffmann (Chicago and London: The University of Chicago Press,

- 1998), 385.
- 22 . John Gray, Post-Liberalism (London and New Yew York: Routledge, 1996), 265.
- 23 . Ibid., 265-266.
- 24 . Ibid., 267.
- 25 . Alan Patten, "Conception libérale de la citoyenneté et identité nationale," in Nationalité, Citoyenneté et Solidarité, ed. Michel Seymour (Montréal: Editions Liber, 1999), 239. Note 18 cites various claims to this effect by Young, Tamir, Kymlicka and Spinner to support this point.
- 26 . For a summary discussion of what is required for a government to be considered democratic both in theory and practice, see Robert H. Dahl, On Democracy (New Haven and London: Yale University Press, 1998), chapters 4 and 8.
- 27 . Rawls, Political Liberalism, 137.
- 28 . Brighouse, "Against Nationalism" 369.
- 29 . Ibid., 370.
- 30 . Ibid., 370.
- 31 . Rawls, Political Liberalism, 217.
- 32 . Jurgen Habermas, Between Facts and Norms, trans. William Rehg (Cambridge: The MIT Press, 1996), 107.
- 33 . Rawls, Political Liberalism, 224-225.
- 34 . Habermas, Between Facts and Norms, 107-108.
- 35 . Brighouse, "Against Nationalism", 371.
- 36 . Ibid., 372.
- 37 . Ibid., 372.
- 38 . Patten, "Conception libérale de la citoyenneté et identité nationale", 242. The same point, particularly as it relates to the rights of women, is forcefully argued by Susan Moller Okin, "Feminism and Multiculturalism," Ethics 108 (July 1998): 661-684 and Martha C. Nussbaum, "Religion and Women's Human Rights," in Religion and Contemporary Liberalism, ed. Paul J. Weithman (Notre Dame: University of Notre Dame Press, 1997), 93-137.
- 39 . For one argument that claims even political liberalism cannot dispense with the concept see Chandran Kukathas, "Cultural Toleration," in Ethnicity and Group Rights, ed. Ian Shapiro & Will Kymlicka (New York and London: New York University Press, 1997), 69-104.
- 40 . Peter Jones, "The Ideal of the Neutral State," in Liberal Neutrality, ed. Robert E. Goodin and Andrew Reeves (London and New York: Routledge, 1989), 9.
- 41 . Dworkin, A Matter of Principle (Cambridge and London: Harvard University Press, 1985) 191.

- 42 . See Bruce Ackerman, Social Justice in the Liberal State (New Haven: Yale University Press, 1980), 3-24; Bruce Ackerman "Neutralities," in Liberalism and the Good, ed. Bruce Douglass, Gerard D. Mara and Henry S. Richardson (New York: Routledge, 1990), 38-39; Dworkin A Matter of Principle, 191; Will Kymlicka, "Liberal Individualism and Liberal Neutrality," Ethics 99 (July 1989): 883-905; Kymlicka, Liberalism Community and Culture, 76-85; Larmore, Patterns of Moral Complexity, 44; Charles Larmore, The Morals of Modernity (Cambridge: Cambridge University Press, 1996), 121-134; and Rawls Political Liberalism, 190-195.
- 43 . Charles Taylor, "Reply and Re-Articulation," in Philosophy in an Age of Pluralism, ed. James Tully (Cambridge: Cambridge University Press, 1994), 250.
- 44 . Ibid., 250.
- 45 . See Colin Bird, "Mutual Respect and Neutral Justification," Ethics (October 1996), 62-96 for one attempt to provide this. See also Larmore Patterns of Moral Complexity, 53-77 for another attempt but see also Charles Larmore "Liberal Neutrality: A Reply to James Fishkin," Political Theory 17 (1989), 581 where he acknowledges that the attempt was not successful.
- 46 . Robert E. Goodin and Andrew Reeve, "Liberalism and Neutrality," in Liberal Neutrality, ed. Robert E. Goodin and Andrew Reeve (London and New York: Routledge, 1989), 2.
- 47 . Robert E. Goodin and Andrew Reeve, "Do Neutral institutions add up to a neutral state?," in Liberal Neutrality, 196.
- 48 . For a good discussion of this issue see Nomi Maya Stolzenberg, "A Tale of Two Villages," in Ethnicity and Group Rights, 290-346, especially 313-315.
- 49 . Ibid., 316.
- 50 . Pierre-Yves Bonin, "Neutralité libérale et croissance économique," Dialogue XXXVI (1997), 685.
- 51 . Ibid., 686.
- 52 . Rawls, Political Liberalism, 12. See also John Rawls, "The Ideal of an Overlapping Consensus," in John Rawls Collected Papers, ed. Samuel Freeman (Cambridge and London: Harvard University Press, 1999), 424, especially note 4. and John Rawls, "Justice as Fairness: Political Not Metaphysical," in John Rawls Collected Papers, 398.
- 53 . Jeremy Waldron, "Legislation and Moral Neutrality," in Liberal Neutrality, 76.
- 54 . Jones, "The Ideal of a Neutral State", 12.
- 55 . Brighouse "Against Nationalism, 377.
- 56 . Ibid., 377.
- 57 . See Susan Mendus, Toleration and the Limits of Liberalism (Atlantic Highland, New Jersey: Humanities Press International Inc., 1989), 118 for an argument that does seem to interpret neutrality in this very strict sense.
- 58 . Waldron, "Legislation and Moral Neutrality," 68-69.

59. Immanuel Kant, "On the Common Saying: 'This May be True in Theory, but it does not Apply in Practice'," in Kant Political Writings, ed. Hans Reiss (Cambridge: Cambridge University Press, 2d. Ed., 1991), 73-74.
60. Ibid., 74.
61. Ibid., 74.
62. Ibid., 74.
63. Ronald Dworkin, A Matter of Principle, 191.
64. See Brian Barry, Justice and Impartiality (Oxford: Clarendon Press, 1995), 129-132 for a discussion of this matter.
65. Paul J. Weithman, "Introduction: Religion and the Liberalism of Reasonable Respect," in Religion and Contemporary Liberalism, 1.
66. Rawls, Political Liberalism, xxiv.
67. Ibid., xvi.
68. Brighouse "Against Nationalism, 375.
69. Ibid., 376.
70. Discussion follows Bonin, "Neutralité libérale et croissance économique", 686-688.
71. Waldron, "Legislation and Moral Neutrality", 67.
72. Tamir, Liberal Nationalism, 145-147 is a particularly good example of this way of attacking the possibility of a liberal state.
73. Bonin, "Neutralité libérale et croissance économique" 687.
74. See Will Kymlicka, "Liberal Individualism and Liberal Neutrality," Ethics 99 (July 1989): 883-905 for a defence of this view. See also Dworkin, A Matter of Principle, 191; and Charles Larmore, Patterns of Moral Complexity, 44.
75. Bruce Ackerman, "Neutralities," in Liberalism and the Good, ed. R. Bruce Douglas, Gerald M. Mara, and Henry S. Richardson (New York and London: Routledge, 1990), 39.
76. Bonin, "Consequential libérale et croissance économique", 688.
77. Kymlicka, "Liberal Individualism and Liberal Neutrality", 883-885; and Rawls, Political Liberalism, 187.
78. Ronald Dworkin, "Foundations of Liberal Equality," in Equal Freedom, ed. Stephen Darwall (Ann Arbor: The University of Michigan Press, 1995), 397-305; and Larmore, Patterns of Moral Complexity, 44.
79. Brighouse argues that in some circumstances this is possible. See "Against nationalism", 378. For another attempt to justify the selection of a national language on morally neutral grounds see Rainer

Knopff, "Language and Culture in the Canadian Debate: The Battle of the White Papers," Canadian Review of Studies in Nationalism VI/1 (Spring 1979): 66-82.

80 . Goodin and Reeve, "Liberalism and Neutrality", 7. See also Stephen Holmes, The Anatomy of Antiliberalism (Cambridge and London: Harvard University Press, 1993), 244 where he argues that "There is nothing logically inconsistent or politically unstable about *selective neutrality*. Liberal regimes abstract from some moral questions but not from others.

81 . Goodin and Reeve, "Liberalism and Neutrality," 7.

82 . Dworkin outlines the problems of attempting to ascertain intent as it related to US constitutional interpretations. See Dworkin, A Matter of Principle, 9-71.

83 . Brighouse "Against Nationalism", 378.

84 . Ibid., 379.

85 . Ibid., 379.

86 . Ibid., 379.

87 . Ibid., 379-380.

88 . Holmes, The Anatomy of Antiliberalism, 238-239. Brian Barry, in a recent book, reiterates this point: "The core of this conception of citizenship...is that there should be only one status of citizen (no estates or castes), so that everybody enjoys the same legal and political rights. These rights should be assigned to individual citizens, with no special rights (or disabilities) accorded to some and not others on the basis of group membership." Brian Barry, Culture and Equality (Cambridge: Harvard University Press, 2001), 7.

89 . Dworkin, Taking Rights Seriously, 227.

90 . Ibid., 227.

91 . Dworkin, A Matter of Principle, 191.

### **3.0 THE "POLITICS OF DIFFERENCE"**

Chapter 2 presented an overview of benign neglect and the liberal values which support it. This model of benign neglect serves as the target of the Affirmationist critique of traditional citizenship in liberal democracies. The goal of this chapter is to explicate the central strands of that critique and highlight its crucial assumptions, particularly the assumptions about individual moral psychology on which it rests. Because the different Affirmationist critics differ in their arguments, it is necessary to review the positions of several such critics. The aim of this review is to ascertain the points of commonality in the various positions and to determine which aspects, if any of the critiques, might be compatible with a modified policy of benign neglect—ie., whether the arguments presented by the Affirmationists necessarily lead to their common conclusion that benign neglect of culture is tantamount to injustice.

Affirmationist theorists focus on the "normative justifications for the specific types of representation, public subsidy, and support that count as recognition of differences".<sup>1</sup> My focus is the normative justifications rather than the specific policy prescriptions (although a description of the policy implications may be necessary to understand the justificatory argument).<sup>2</sup> The justifications are tied to the theorists' views about which groups stand in need of, and have a right to, positive affirmation, and as Nancy L. Rosenblum argues, there is no agreement or consensus among theorists on this matter:

Proponents may restrict recognition to minority cultural communities whose viability is threatened, or more narrowly to previously self-governing territorially concentrated national minorities. Another proposed category is groups whose distinctive histories and cultural forms have their origin in oppression, which includes but is not limited to cultural domination. Alternatively, candidates for recognition are groups that suffer persistent, systemic subordination and disadvantage, regardless of the history and cause of disadvantage, and whether or not members are stigmatized.<sup>3</sup>

The variety of different groups put forward by different Affirmationists leads some critics to argue that, while there may be a normative case for the positive affirmation of various cultural groups, the logic of the argument inevitably leads to such a proliferation of candidates for special treatment that the idea is simply impractical.<sup>4</sup> Rosenblum, however, argues, and I agree, that this is not a valid critique of any one theorist's taxonomy of eligible groups:

...the prospect of endless balkanization and unbearable strain on public resources looms large only if we imagine accepting every incommensurate basis for recognition.<sup>5</sup>

I discuss the arguments of six contemporary political philosophers--Young, Phillips, Taylor,

Tamir, Raz and Kymlicka—as representative of Affirmationist thinking. Two broad arguments are put forward to justify state affirmation of culture. One appeals to the intrinsic importance of language and culture and its role in the formation of individual identity. The second argues that cultural affirmation is required by the liberal value of equality. On this view, it is the universally applicable value which matters; the affirmation of culture is merely a necessary instrument to achieve it. Although some theorists mix variants of both arguments, it is important to differentiate between them because, as I subsequently argue, policy measures taking account of citizens' cultural characteristics, but justified on the grounds of equal treatment, are not incompatible with my conception of benign neglect; nor do they conflict with a nonrestrictive view of public reason. Indeed, as we shall see, attention to the perspectives of those suffering unequal treatment on account of their cultural background is actually a requirement of robust public deliberation. Arguments for the especial normative worth of culture itself, on the other hand, are incompatible with benign neglect and problematic for public reason. There is an important divide among the Affirmationists, a divide separating Young and Phillips from the others. Young's and Phillips's justifications are based on the value of equality and the injustices of actual citizenship practice; in a perfect world, many of their policy proposals would be redundant. Kymlicka, Tamir, Raz and Taylor, on the other hand, mount complex normative arguments as to why state recognition of language and culture is necessary irrespective of current practice; there is something about language and culture which gives rise to legitimate moral claims.

### **3.1 Iris Marion Young**

Young begins with a critique of the traditional liberal democratic view of citizenship discussed in Chapter 2. "Modern political theory" she says "asserted the equal moral worth of all persons" which implied "the inclusion of all persons in full citizenship status under the equal protection of the law".<sup>6</sup> The general assumption is that:

...the universality of citizenship in the sense of citizenship for all implies a universality of citizenship in the sense that citizenship status transcends particularity and difference.<sup>7</sup>

From this perspective it follows that:

The state and law should express rights only in universal terms applied equally to all, and differences among persons and groups should be a purely accidental and private matter...People should be treated as individuals not as members of groups.<sup>8</sup>

This universalistic view of citizenship has not, however, led to a difference blind world:

...in the late twentieth century...when citizenship has been formally extended to all groups in liberal capitalist societies, some groups still find themselves treated as second-class citizens.<sup>9</sup>

This state of affairs is, says Young, partly explained by modern capitalism. Capitalism is not, however, the whole or even the most important part of the explanation.<sup>10</sup> Any attempt to identify and remedy the problem must begin with an understanding of the concepts of domination and oppression and how these impact differently on different individuals depending on their membership in different social groups. In Young's words, "Oppression happens to social groups."<sup>11</sup> Contemporary justice theories fail to take this fact into account, focussing too exclusively on distribution:

While distributive issues are crucial to a satisfactory conception of justice, it is a mistake to reduce social justice to distribution...[because this]...tends to ignore the social structure and institutional context that often help determine distributive patterns.<sup>12</sup>

The goal of a just society must therefore be the "elimination of institutionalized domination and oppression" which affects individuals differently depending on their social group.<sup>13</sup>

Social groups are neither "aggregates", which are simply "any classification of persons according to some attribute", nor "associations", which are "formally organized institution[s], such as club[s]".<sup>14</sup>

A social group is:

...a collective of persons differentiated from at least one other group by cultural forms, practices or way of life. Members of a group have a specific affinity for one another because of their similar experience or way of life.<sup>15</sup>

Groups are defined by, define themselves, in comparison with other groups having different characteristics and life experiences. They are not defined, however, once and for all by a set of ethnic, cultural or other characteristics; rather "groups are fluid".<sup>16</sup> Shared objective characteristics might, sometimes, be a "necessary condition classifying oneself or others as belonging to a certain social group", but it is an individual's identification "with a certain social status [and] the common history that social status produces, and self-identification that define the group as a group".<sup>17</sup> No single group identity is constitutive of individual identity. Young argues that "Those who reduce group difference to identity implicitly use a logic of substance to conceptualize groups."<sup>18</sup> Such views imply an unacceptable and unsustainable "essentialist" view of groups:

Whether imposed by outsiders or constructed by insiders to the group, attempts to define

the essential attributes of persons belonging to social groups fall prey to the problem that there always seem to be persons without the required attributes whom experience tends to include in the group or who identify with the group. The essentialist approach to defining social groups freezes the experienced fluidity of social relations by setting up inside-outside distinction among groups.<sup>19</sup>

This also fails to “confront the fact that many people deny that group positioning is significant for their identity”.<sup>20</sup> Young recognizes the importance of cultural groups:

...culture provides people with important background for their personal expression and contexts for their actions and options. Culture enables interaction and communication among those who shape it.<sup>21</sup>

To argue, however, that any particular group identity is the basis of individual identity is fraught with problems:

If group identity constitutes individual identity and if individuals can identify with one another by means of group identity, then how do we deal theoretically and practically with the fact of multiple group positioning? Is my individual identity somehow an aggregate of my gender identity, race identity, class identity, like a string of beads, to use Elizabeth Spelman’s image?<sup>22</sup>

Groups may be fluid and lack essences, but they are nonetheless crucially important for the individual. Contrary to associations which are themselves constituted by individuals, groups:

...constitute individuals. A person’s particular sense of history, affinity, and separateness, even the person’s mode of reasoning, evaluating, and expressing feelings, are constituted partly by...group affinities.<sup>23</sup>

As a direct consequence of sharing the characteristics of certain social groups—people of colour, gay men, lesbians, the physically or mentally challenged, cultural minorities etc. —individuals incur oppression and domination. Young differentiates between oppression which:

...consists in systematic institutional processes which prevent some people from learning and using satisfying expansive skills in socially recognized settings, or institutionalized social processes which inhibit people’s ability to play and communicate with others or to express their feelings and perspective on social life in contexts where others can listen<sup>24</sup>

And domination which:

...consists in institutional conditions which inhibit or prevent people from participating in determining their actions or the conditions of their actions. Persons live within structures of domination if other persons or groups can determine without reciprocation the conditions of their action.<sup>25</sup>

The two conditions are not identical: “not everyone subject to domination is also oppressed”<sup>26</sup> The difference is not material for my purposes, and I focus on oppression.

Oppression has five faces: exploitation, marginalization, powerlessness, cultural imperialism and

violence. Young's idea of *exploitation* is broader than Marxist class exploitation; an exploitative relationship may exist between many different social groups: men and women or different racial or cultural groups for example. It exists if there is "a steady process of the transfer of the results of the labour of one social group to the benefit of another."<sup>27</sup> *Marginalization* occurs when there "are people the system of labour cannot or will not use".<sup>28</sup> While it is most evident in the treatment (in the United States) of racial minorities, it is not limited to them but may apply to others—old people, the mentally and physically disabled etc. The resulting material deprivation can (could) be addressed by income redistribution, but the harm goes beyond poverty in that "it blocks the opportunity to exercise capacities in socially defined and recognized ways."<sup>29</sup> *Powerlessness* is the condition of having little or no autonomy or control in the workplace; it chiefly afflicts non-professional workers. The powerless "lack the authority, status, and sense of self that professionals tend to have."<sup>30</sup> Powerlessness "appears starkly in the dynamics of racism and sexism."<sup>31</sup>

The fourth face of oppression is *cultural imperialism* which "involves the universalization of a dominant group's experience and culture, and its establishment as the norm...the dominant groups project their own experience as representative of humanity as such".<sup>32</sup> Dominant group norms and standards—defined as universal truths—judge and stigmatize cultural minorities who "are both marked out by stereotypes and at the same time rendered invisible."<sup>33</sup> The injustice of arises from the fact:

...that the oppressed group's own experience and interpretation of social life finds little expression that touches the dominant culture, while that same culture imposes on the oppressed group its experience and interpretation of social life.<sup>34</sup>

The final form of oppression is the exposure to systematic *violence*. Certain racial groups—blacks, Arabs, gays and lesbians, women etc., are more subject to violent attack than are members of the dominant social group(s). Furthermore, violence often intersects with cultural imperialism:

The culturally imperialised may reject the dominant meanings and attempt to assert their own subjectivity, or the fact of their cultural difference may put the lie to the dominant culture's implicit claim to universality. The dissonance generated by such a challenge to the hegemonic cultural meanings can also be a source of irrational violence.<sup>35</sup>

Young proposes a variety of remedies for oppression based on the principle that:

...a democratic public should provide mechanisms for the effective recognition and representation of the distinct voices and perspectives of those of its constituent groups that are oppressed or disadvantaged.<sup>36</sup>

The details and feasibility of her proposals are outside my scope. The point I wish to make is that Young's proposals and the justifications she offers do not conflict with the conception of benign neglect based on justificatory neutrality that I outlined in Chapter 2. She specifically does **not** justify her proposals by claiming any particular moral value for social groups. While Young accepts that individuals' (often) multiple identities are important for them and may structure their perspectives, her proposals, unlike those of Affirmationists such as Taylor, are justified by the fact of individual oppression, not the special value of their identities. Members of some groups are unequally subject to more and different forms of oppression than are members of other groups; they are subject to unequal treatment because of their group memberships. If oppression and unequal treatment did not exist, if racism, agism, sexism etc., were to disappear, so would Young's justifications for group differentiated policies. A just state, the indifferent state, faced with oppression based on group membership requires policies to redress the injustice and benign neglect in no way precludes such policies. Far from being prohibited from adopting group specific policies, such a state would have a moral obligation to do so. The state would be indifferent to language, culture, and group membership as such; it would not be indifferent to oppression, injustice and unequal treatment.

Young's arguments for group differentiated policies are thus justified on the grounds of oppression and unequal treatment not on the moral importance of culture itself. The underlying assumption is, as Kymlicka has noted, that:

...cultural groups must "understand themselves as participating in the same society", and as "part of a single polity", whose common decision-making procedures are seen as "legitimately binding" on all people equally.<sup>37</sup>

Cultural difference does not justify separate political arrangements for national minorities or other groups. The need for affirmative measures arises from the fact of oppression, and such remedies should be provided by the existing polity. That polity's policies should be developed in ways which facilitate the participation in public discussion of individuals belonging to all social groups. The public of contemporary societies is "heterogeneous and this fact must be recognized and accommodated by public discussion and inclusive concepts of public reason."<sup>38</sup>

### **3.2 Anne Phillips**

Phillips's position on cultural affirmation is similar to Young's; she justifies policies that take

account of cultural (and gender) differences as necessary to rectify unequal treatment. Phillips wants to challenge traditional citizenship practices: “The false abstractions of citizenship must be challenged, as must the extraordinary under-representation of women and ethnic minority citizens inside our political assemblies”.<sup>39</sup> Nevertheless, the traditional difference blind view of liberal citizenship has value:

...the universality that flattens out difference was...a great inspiration to progressive politics and thought, and that the heterogeneity which welcomes variation can carry with it a disturbing fragmentation...<sup>40</sup>

Traditional understandings of liberal democracy considered differences to be “a matter of ideas”; consequently “[political] representation is [on this view] considered more or less adequate depending on how well it reflects voters’ opinions or preferences or beliefs”.<sup>41</sup> From this perspective, politics is a “politics of ideas”, that is, “a matter of judgement and debate” which “expects political loyalties to develop around policies rather than people.”<sup>42</sup> In contemporary liberal democracies, however, difference often refers to the cultural or demographic characteristics of citizens:

Many of the current arguments over democracy revolve around what we might call demands for political presence:...In this major reframing of the problems of democratic equality, the separation between ‘who’ and ‘what’ is to be represented, and the subordination of the first to the second, is very much up for question. The politics of ideas is being challenged by an alternative politics of presence.<sup>43</sup>

Given demands for the political recognition of difference, different responses are possible. There is the French model of “a strong notion of what it means to be a citizen of a particular country”; differences belong strictly to the private sphere.<sup>44</sup> The problem with this approach “is that it can lend itself to a majoritarian arrogance”.<sup>45</sup> This may amount to semi-coercive assimilation, or it can be somewhat more tolerant but with difference largely confined to private life.<sup>46</sup> The other possibility explicitly acknowledges difference and brings it onto the political stage.

Phillips supports the specific recognition of difference. She goes so far as to express some sympathy for the “symbolic” aspects of recognition and representation arguing that:

When those charged with making the political decisions are predominantly drawn from one of two sexes or one of what may be numerous ethnic groups, this puts the others in the category of minors. They remain like children, to be cared for by those who know best.<sup>47</sup>

Her acceptance of the symbolic importance of representation is not wholly based on pragmatic reasons of political stability:

What is at issue, rather is what Charles Taylor has called the 'politics of recognition'. Because the modern age makes identity more problematic...it also makes recognition far more important to people's well-being; and if your way of life is not recognized as of equal value with others, this will be experienced as a form of oppression.<sup>48</sup>

Phillips's acceptance of Taylor's argument is, however, tentative. She herself nowhere, as best I am able to ascertain, advances a normative argument in favour of special recognition for cultural identity as such. Her arguments are pragmatic, supporting policies favouring marginalised groups and making sure that their perspectives, their ideas, not their demographic characteristics, are given equal consideration along with those of individuals from more dominant groups.<sup>49</sup> For Phillips:

The real importance of political presence lies in the way it is thought to transform the political agenda, and it is this that underlies the greater priority now accorded to gender, ethnicity and race.<sup>50</sup>

Presence is particularly important "when it addresses those ideas or concerns or values that have not yet reached the political stage."<sup>51</sup>

Phillips, like Young, is concerned with groups and group identities for reasons which can be accommodated by benign neglect. The justification for encouraging the 'politics of presence' is inequality which reflects cultural difference. Marginalization and exclusion need to be combated, however, whether or not they result from cultural difference:

...the exclusion of working-class perspectives seems just as problematic for contemporary democracy as the exclusion of women or ethnic minorities.<sup>52</sup>

Phillips accepts the need for specific group representation, but she remains committed to the idea that the struggle for justice requires a common unified political process rather than one segmented and divided:

If political presence matters, it is because existing structures of power and representation have denied the pertinence of excluded perspectives and concerns, and the re-assessments implied in this cannot be tackled through ceding power to a diversity of relatively autonomous voluntary groups...The only possible forum...is that more inclusive assembly which draws together representatives from the citizenry as a whole:...[that] should in principle represent us all.<sup>53</sup>

### **3.3 Charles Taylor**

Taylor is an affirmationist in the strong sense of the term; he argues that state promotion and protection of language and culture is normatively justified because one's language and culture are constitutive of one's identity, for who one is. His is not an argument aimed at rectifying inequality.

Demands for recognition by different cultural groups are one characteristic of contemporary

politics. This demand:

...is given urgency by the supposed links between recognition and identity, where this latter term designates something like a person's understanding of who they are, of their fundamental defining characteristics as a human being.<sup>54</sup>

Individual identity, carries the normative weight. Taylor argues:

...that our identity is partly shaped by recognition or its absence, often by the *mis*recognition of others, and so a person or group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves. Nonrecognition or misrecognition can inflict harm, can be a form of oppression.<sup>55</sup>

Although, this assertion may seem similar to Young's "cultural imperialism", there are important differences. Young argues that an individual may possess various identities no one of which is essential for her identity. For Young it is substantive oppression that is important, not cultural identity. Taylor's position is, on the other hand, that while identity is not uniquely constituted by language and culture, they are sufficiently important to justify the state adopting policies designed to promote and preserve a particular culture.

My identity, he says:

...is defined by the commitments and identifications which provide the frame or horizon within which I can try to determine from case to case what is good, or valuable, or what ought to be done, or what I endorse or oppose...it is the horizon within which I am capable of taking a stand.<sup>56</sup>

Individuals are not just "strongly attached" to their identities:

...rather it is that this provides the frame within which they can determine where they stand on questions of what is good, or worthwhile, or admirable, or of value...<sup>57</sup>

For we moderns, this identity is "an *individualized* identity;" it "is particular to me".<sup>58</sup> While this identity is individual, and is commonly thought to be the creation or discovery of the individual, it in fact derives from our relations with other people:

We become full human agents, capable of understanding ourselves...of defining our identity, through our acquisition of rich human languages of expression...But we learn these modes of expression through exchanges with others...The genesis of the human mind is...not something each person accomplishes on his or her own, but dialogical.<sup>59</sup>

Our individual identity is, therefore, always defined "in dialogue with, or sometimes in struggle against, the things our significant others want to see in us".<sup>60</sup> This dialogical nature of identity formation provides the link to the need for recognition; my identity "crucially depends on my dialogical relations with

others”.<sup>61</sup>

Recognition of identity takes place in both the private and public spheres, but it is public recognition which is relevant for Taylor’s policy conclusions. Taylor’s analysis of identity is both philosophical and historical in nature.<sup>62</sup> The crucial point is, however, that if an individual’s cultural and linguistic identity is not given adequate public recognition, because he or she is a member of a cultural minority, serious individual harm can result:

...misrecognition shows not just a lack of due respect. It can inflict grievous wounds, saddling its victims with a crippling self-hatred. Due recognition is not just a courtesy we owe people. It is a vital human need.<sup>63</sup>

Taylor’s claim is not just that individuals need to be recognized, but that it is the state which must do the recognizing. As Thomas L. Dumm argues:

The issue of dignity comes to be framed in terms that are most sensibly addressed by the development of state power.<sup>64</sup>

State power--the power to recognize cultural identities, the power to protect and promote majority and minority cultures, the power to limit rights and freedoms in the cause of ensuring that individuals do not suffer the grievous psychological harm that comes from misrecognition--is at the centre of Taylor’s affirmationist project. Taylor’s philosophical position is best explored by considering his arguments in relation to Quebec’s place in Canada.

Political differences between Quebec and the rest of Canada (ROC) are not, Taylor argues, driven by significant differences in political values; there is, in fact, general agreement on values such as equality, non-discrimination, the rule of law, representative democracy and social provision.<sup>65</sup> The important political differences are differences about the appropriate political response to the question of identity. The central point of division is the question “what ought to be the basis of unity around which a sovereign political entity can be built?”<sup>66</sup> According to Taylor, Quebec and the ROC give different answers to this question. In the ROC, “people find the bonding elements in political institutions and ways of being”.<sup>67</sup> This cashes out in a loyalty to federalism, the Charter of Rights and Freedoms, and a healthy dose of anti-American chauvinism. Quebec, on the other hand, responds to questions about the purpose of a country with the view that “one needs a country in order to defend or promote the nation”. In other words:

...the survival and/or flourishing of this nation/language [is] one of the prime goals of political society. No political entity is worth allegiance that does not contribute to this.<sup>68</sup>

These two different responses represent two fundamentally different philosophical positions. The first, identified with Anglo-American theorists, stresses individual rights and is suspicious of collective or group rights and policies designed to promote cultural survival. It is based on the Kantian view that emphasizes individual autonomy as the foundation for human dignity. The logical consequence is the neutral liberal state.<sup>69</sup> The second view, on the other hand, argues that:

It is axiomatic...that the survival and flourishing of French culture in Quebec is a good. Political society is not neutral between those who value remaining true to the culture of our ancestors and those who might want to cut loose in the name of some individual goal of self-development.<sup>70</sup>

Society can thus be “organized around a definition of the good life” and this lack of neutrality need not be seen “as a depreciation of those who do not share this definition”.<sup>71</sup> It is, furthermore, justifiable for a state to limit various freedoms in order to achieve this goal:

One has to distinguish the fundamental liberties, those that should never be infringed and therefore ought to be unassailably entrenched...from privileges and immunities that are important, but that can be revoked or restricted for reasons of public policy—although one would need a strong reason to do this—on the other.<sup>72</sup>

However, exactly where this line between “fundamental liberties” and revokable “privileges and immunities” should be drawn is not clear. As Phillips puts it, Taylor’s:

...list of the fundamental rights of the liberal tradition—‘rights to life, liberty, due process, free speech, free practice of religion’—tails off into the necessary ‘and so on’, for it is difficult to draw up the definitive list that will stand for all future occasions.<sup>73</sup>

Taylor’s complex argument can be simplified as follows: The modern sense of identity, which is crucial to individual psychological well-being, indeed, essential to having a functioning psychology at all, depends, to some extent at least, on the public recognition by the state of the merit and worth of one’s language and culture. How this came to be is the result of a long historical process which, while self-evidently different in different cultures, has led to the modern version of identity which is sufficiently widespread to be taken as a given for citizens and residents of a contemporary liberal democracy such as Canada. In such a society, citizens need, want and are morally justified in demanding measures to ensure the survival of their language and culture even if this requires limitations on all but “basic” rights and liberties. It is understandable and justifiable that a cultural group wants to control its own state in

order to more easily use the coercive power of the state to achieve linguistic and cultural goals. Where this is not feasible—in the case of immigrant groups for example—cultural minorities can seek recognition through the education system or in other unspecified ways. Taylor says little about how conflicts between various claims for recognition are to be resolved. Minorities are entitled to recognition and all basic rights and freedoms but, at least in the case of Quebec, certain privileges and immunities may be overridden if this is what is necessary to guarantee the survival of a threatened majority.

The justification has nothing to do with equal treatment or the rectification of inequality. The claim is that a culturally based individual identity is essential to the individual:

The conception of identity is the view that outside the horizon provided by some master value or some allegiance or some community membership, I would be crucially crippled...and would...be unable to function as a full human subject.<sup>74</sup>

In these circumstances, support and recognition for my culture is not, to use Dworkin's terms, a policy question; it is an issue of principle, a question of right:

The core of the modern conception of rights is that respect is wed to the integrity of the human subject. This obviously entails that the human subject has a right to life, to liberty; on Lockean assumptions, also to property. But if we add the Romantic understanding of identity as essential to human subjecthood, then plainly there is something else here to which we have a right, namely that the conditions of identity be respected.<sup>75</sup>

This, in turn, requires the survival and flourishing of our linguistic community. Language and culture require continuous attention and support:

[they]...are going concerns only to the extent that they are continually recreated through expression, be it through works of art, public institutions, or just everyday exchange. Keeping a language healthy involves giving it scope for expression. So if we have a right that the conditions of our identity be respected, and if these conditions are primarily concerned with the health of our natural language, and if these depend on its expressive power and hence also on opportunity, then we have a right that our language be accorded scope for expression.<sup>76</sup>

Taylor's arguments are fundamentally different from those deployed by Young and Phillips. Young's and Phillips's justifications were founded upon the liberal value of equality combined with empirical conditions of oppression and deprivation which (happen to) impact individual members of some cultures or groups more than others. Taylor's argument, however, does not require inequality or empirical hardship; it is sufficient that a linguistic culture face the possibility of long term decline, regardless of the present circumstances of the individual members of the culture.

In order to attack Taylor's position it is necessary to take full aim at the idea of a cultural identity

as central to an individual's psychological existence. One must "question Taylor's strong emphasis on the cultural construction of identity" on the grounds that "an individual's cultural identity is by no means the sole or even the dominant influence on his or her conception of a good life".<sup>77</sup> This identification of language and culture as the determinant, if not unique grounding of identity is a fundamental issue for the moral psychology of citizenship. Chapter 4 addresses the question of the moral psychology of citizenship and considers the specific concepts put forward by the Affirmationists to ground their position.

### **3.4 Yael Tamir**

Tamir argues that individuals are "contextual"; a "contextual individual" is:

...an autonomous person who can reflect on...his conception of the good, his ends, and his cultural and national affiliations, but is capable of such choices because he is situated in a particular social and cultural environment that offers him evaluative criteria.<sup>78</sup>

Culture itself, however important, is a matter of choice both in fact and by right:

...a national culture is not a prison and cultural ties are not shackles...not only should individuals have a right to choose the national group they wish to belong to, but they should also have the right to define the meaning attached to this membership.<sup>79</sup>

The choice of a culture, while still a choice, is a particularly important choice, and Tamir advances several reasons as to why an individual's choice of culture should be respected.<sup>80</sup> It is constitutive of personal identity and instrumentally valuable in that a secure cultural framework is necessary for individuals to be able to exercise their capacity for choice in other areas. Moreover, respect for an individual's cultural choices is a specific example of respect for individual choices in general; the free choice of one's culture is a part of exercising one's individual autonomy.

Tamir separates the right to national self-determination from nationalists' demands for an independent state.<sup>81</sup> She distinguishes cultural self-determination, which is the right of a cultural group to preserve and give public expression to its cultural features, from democratic self-determination which is the right to democratic political institutions.<sup>82</sup> The latter simply requires the existence of democratic modes of law and government. The former, which is the focus of her arguments, requires particular institutional arrangements which permit and foster the reflection of cultures, particularly minority cultures, in the public sphere. Cultural self-determination is, therefore:

...the right of individuals to express their national identity, to protect, preserve, and cultivate the existence of their nation as a distinct entity.<sup>83</sup>

This view of cultural determination “allows all nations to enjoy it in some form”.<sup>84</sup>

Tamir rejects the very possibility of a neutral state and benign neglect, an approach she identifies with Walzer’s individual rights based Liberalism I. But unlike Taylor she does not see Liberalism 2, which permits the state to favour the survival and flourishing of a particular national culture as long as basic rights are protected, as significantly different:

In practice the difference between the two forms of liberalism is less profound than it may seem...it is only because liberalism 1 is not a viable practical option that liberalism 2 emerges as an alternative...as this alternative retains, in practice and in theory, a commitment to the ideal of individual rights embodied in liberalism 1 the close affinity between the two forms of liberalism is retained.<sup>85</sup>

The only difference between the two versions of liberalism “seems to be in the awareness of the state that it cannot but promote some particular culture(s).”<sup>86</sup> This is of particular relevance for minority cultures the members of which have come to understand that:

...being granted a set of formal civic rights was insufficient to ensure equal status, and realized that they had to decide what was the lesser of two evils: remaining estranged and marginalised, or integrating at the price of self-effacement...the ideal of a culturally neutral sphere embodies a dangerous and oppressive illusion.<sup>87</sup>

The appropriate solution is a multiculturalism which recognizes the right to cultural self-determination as defined above; this in turn requires:

...provisions aimed at protecting the cultural, religious and linguistic identity of minorities and assuring them an opportunity to live alongside the majority, “co-operating amicably with it, while at the same time preserving the characteristics which distinguish them from the majority, and satisfying the ensuing special needs”.<sup>88</sup>

In a multicultural state the public sphere should be:

...varied to reflect the particularities of its members. Citizens are no longer expected to transcend their particular, self-interested lives in order to participate in public discussions and collective decision-making.<sup>89</sup>

Citizens do, however, “need a shared basis of consensus in order to be able to agree on a set of basic political principles.”<sup>90</sup>

Tamir identifies two different multiculturalisms:

...a thin one which involves different liberal cultures; the second, *thick multiculturalism* which involves liberal as well as illiberal cultures.<sup>91</sup>

In the case of thin multiculturalism, shared principles may be possible: “Rawls’s overlapping consensus or Dworkin’s abstract egalitarian principle seem well-suited to filling the need for guiding principles”.<sup>92</sup>

Even in these circumstances, however, specific recognition of cultural differences will be necessary because, in addition to shared principles, “different cultural groups have specific interests they strive to protect, the most common of these being the preservation and protection of their own cultural identity”.<sup>93</sup>

The case of thick multiculturalism is more troubling because it raises:

...questions of cultural relativism and the inability to converse across conflicting systems of belief...<sup>94</sup>

Traditional liberalism, which Tamir labels “autonomy-based liberalism” has difficulty accepting cultures and forms of life which do not actively promote and encourage individual autonomy. It “tolerates and respects only autonomy-supporting cultures”; it “ranks communities by their potential contribution to the conditions of autonomy”.<sup>95</sup> Hence, it is justifiable to take actions

“to assimilate minority cultures...even at the cost of letting the culture die...”<sup>96</sup> “Rights-based” liberalism which Tamir identifies with the Rawls of Political Liberalism and The Law of Peoples “takes the rights of individuals to be paramount without conceiving of these rights as grounded in autonomy”.<sup>97</sup> Such liberalism is capable of a “live and let live” approach to illiberal cultures “which respect their members and allow them some means of participation and social influence”.<sup>98</sup> The important issue for rights based liberalism is not the source of individuals’ preferences but the fact that they have them.<sup>99</sup> Even for this form of liberalism, however, there is a problem. While liberals may want to interact with and understand all cultures included in the polity, including illiberal cultures, their desire is probably not shared by (many) members of illiberal cultural groups who see such interaction as a threat to their way of life.<sup>100</sup> The nature of thick multiculturalism may thus:

make it impossible to achieve a political agreement...seen as ideal by either of the parties. The most that can be achieved is an untidy compromise which all parties resent to some extent.<sup>101</sup>

In these circumstances, there is “no right solution, but only a set of reasonable ones”; these cannot be defined a priori but must be “the product of constant political discussions and negotiations.”<sup>102</sup> Consequently, “Philosophers...have little to say about the nature of such agreements and should leave politicians to search for practical solutions”.<sup>103</sup>

In spite of her contention that philosophers (and, therefore, presumably normative considerations) have little to add to political debates concerning thick multiculturalism, Tamir’s position actually implies

the reverse. Multiculturalism, including thick multiculturalism, requires some concept of legitimacy and of public reason if politics is to have a basis other than pure power. If it were the case that political arrangements must be worked out by political negotiation, moral rules of the game would still be required. Negotiations carried out without reference to moral considerations would only lead to agreements favouring the dominant group(s). Why, absent normative considerations, would the majority not impose its will on both liberal and illiberal minorities, at least insofar as this were consistent with social stability? Tamir's position itself is based on a normative claim meant to constrain the scope of any purely political agreement: the especial normative value of "identity":

Cultural interests are identity-bound interests,...which relate to one's desire to preserve one's identity, and are therefore of particular importance...particularly worthy of respect.<sup>104</sup>

Tamir's argument thus mirrors Taylor's to the extent she considers an individual's linguistic and cultural identity of particular importance because it is constitutive of the individual; her arguments for this position are, however, largely based on the value of autonomy—we should respect cultural choices as examples of autonomous choices in general. Tamir, like Taylor, argues for the elevation of a preference for one's (chosen) culture to the level of a right; such preferences, therefore, serve as "trumps" in political disputes involving cultural matters. If one assumes that such issues are to be debated according to the structures of some version or other of public reason, Tamir's position rules some arguments out of bounds: the wisdom or value of a particular cultural choice is not a proper subject for debate. Why this should be the case when culture is a choice is not quite clear from her arguments. While she evidently means to put the choice of culture in a different category from other choices and preferences—the category of a right—she presents no coherent argument as to why this is the case.

### **3.5 Joseph Raz**

Raz's position resembles Tamir's in its stress on the constitutive importance of language and culture for individual identity. Raz, however, takes a stronger position than Tamir in favour of the importance of one's native culture rather than one's chosen culture. He sees the challenge of multicultural diversity as discovering "what can replace common nationality as the cementing bond of a political unit?"<sup>105</sup> His response to the question is "Multiculturalism" which "means—among other things—the coexistence within the same political society of a number of sizable cultural groups wishing and in

principle able to maintain their distinct identity.”<sup>106</sup> Raz does not believe that multiculturalism implies a single set of policies; circumstances vary such that different countries will require different policies.

Multiculturalism may thus be more an attitude than a specific policy or set of policies:

It is the diverse forms which multiculturalism takes in different countries which makes it difficult to think of multiculturalism as more than a new moral sensitivity. The multicultural policies appropriate in different countries vary greatly...<sup>107</sup>

Raz’s flexibility at the policy level is, however, accompanied by a more dogmatic approach to justification. Multiculturalism, at this level, is not “just a new moral sensitivity”. Liberal multiculturalism, at least, is:

...a normative precept motivated by concern for the dignity and well-being of all human beings. It is a precept which affirms that in the circumstances of contemporary Western societies a political attitude of fostering and encouraging the prosperity, cultural and material, of cultural groups, and respecting their identity, is justified.<sup>108</sup>

“Justified” in this context means morally required.

The justification is based on the value of what A. Margalit and Raz call “encompassing groups”.<sup>109</sup> Such groups are particularly important to the well-being of their individual members. They are characterized as having a common culture that covers many important aspects of life and mark individuals growing up in them in an indelible way. Membership “is a matter of belonging, not of achievement”.<sup>110</sup> While individuals may slowly and with great effort “migrate to other environments, shed their previous culture, and acquire a new one” individuals’ own cultural groups are pre-eminently important.<sup>111</sup> Margalit and Raz jointly advance two reasons why this is so:

...membership of such groups is of great importance to individual well-being, for it greatly affects one’s opportunities. Secondly, it means that the prosperity of the culture is important to the well-being of its members.<sup>112</sup>

These appear to be pragmatic justifications similar in kind to those offered by Young and Phillips. If material well-being is what is at issue, other (distributional) remedies may be more appropriate than multicultural recognition. Moreover, many people might consider the prosperity of their religious groups more important to their spiritual well-being, and the prosperity of their social class, province or region as more important to their material well-being.

Raz, separately, offers normative reasons for cultural affirmation, reasons he believes are rooted in liberal moral psychology.<sup>113</sup> “Freedom” he argues, “depends on options which depend on rules which

constitute those options”; and “options presuppose a culture”,–i.e., “They presuppose shared meanings and common practices.”<sup>114</sup> Raz advances three reasons why this fact about culture implies that its flourishing is of overwhelming importance for the individual. First:

Only through being socialized in a culture can one tap the options which give life a meaning. By and large one’s cultural membership determines the horizon of one’s opportunities...Little surprise that it is in the interest of any person to be fully integrated in a cultural group...Its prosperity contributes to the richness and variety of the opportunities the culture provides access to.<sup>115</sup>

Second, the “sameness of culture facilitates social relations”, particularly those between parent and child:

...in one’s relations with one’s children and with one’s parents, a common culture is an essential condition for the tight bonding we expect and desire. A policy which forcibly detaches children from the culture of their parent not only undermines the stability of society by undermining people’s ability to sustain long-term intimate relations, it also threatens one of the deepest desires of most parents, the desire to understand their children, share their world, and remain close to them.<sup>116</sup>

Raz’s third argument mirrors Taylor’s and Tamir’s argument from identity:

For most people, membership in their cultural group is a major determinant of their sense of who they are; it provides a strong focus of identification; it contributes to what we have come to call their sense of their own identity...one’s culture constitutes (contributes to) one’s identity. Therefore slighting one’s culture, persecuting it, holding it up to ridicule...hurts [members of the group so treated] and offends their dignity.<sup>117</sup>

For Raz, therefore, affirmationist policies are justified (required) by a particular moral psychology and by the recognition that in today’s diverse liberal democracies the needed political unity cannot depend upon a common cultural background. Rather it must ultimately depend “on people’s free and will identification with the political society they belong to”. In order for this to be the case, identification with the larger political unit must “not replace”, but incorporate “identification with other groups in that society”.<sup>118</sup> For this to happen, the larger society must show respect (recognition in Taylor’s language) the individual cultures which make up the polity.<sup>119</sup>

Raz’s arguments are more akin to those of Taylor and Tamir than to those of Young and Phillips. While he offers pragmatic justifications for cultural affirmation—the welfare of individual group members, for example—the heart of Raz’s arguments is his moral psychology. His position is that recognition and affirmation of an individual’s language and culture are normatively necessary importantly depends on his moral psychology.

### **3.6 Will Kymlicka**

Kymlicka outlines both a theoretical justification of cultural affirmation and a detailed framework of the policy implications in the Canadian context. He thus brings together affirmationist theory and practice in a way that the other theorists discussed above do not.

Kymlicka's theoretical justification for cultural affirmation can be conceptualized as both top down and bottom up: top down because, looking at society as it is, a culturally neutral state, a state which *successfully* implements a policy of benign neglect as usually defined, is impossible; and bottom up because state protection and support for language and culture, at least in certain circumstances, is morally required by more fundamental liberal political principles.

Kymlicka defends the importance of a state which is neutral between comprehensive views or theories of the good life held by citizens:

In a liberal society, the common good is the result of a process of combining preferences, all of which are counted equally (if consistent with the principles of justice). All preferences have equal weight 'not in the sense that there is an agreed public measure of intrinsic value or satisfaction with respect to which all of these conceptions come out equal, but in the sense [that they are not evaluated at all from a public] standpoint' (Rawls 1982 p.172). ..in a liberal society the common good is adjusted to fit the pattern of preferences and conceptions of the good held by individuals.<sup>120</sup>

This neutrality is grounded by the liberal idea of equality: "government neutrality is part of what it is to treat people as equals..."<sup>121</sup> As discussed in Chapter 2, Kymlicka rejects consequentialist neutrality as impossible and defends justificatory neutrality which argues that neutrality is defined by the justifications offered for policies and not by the inevitable fact that policies will have different impacts on the prospects for different groups. "Fairness" for different groups "requires that people be guaranteed a fair share of resources to pursue their way of life, and the freedom to seek out new adherents"; it most certainly does not "require a guarantee that one group's prospects will equal another's" or "that each way of life be guaranteed a certain number of adherents".<sup>122</sup>

When the issue in question is language and culture, however, Kymlicka argues against benign neglect because it is impossible for the liberal state to be neutral in its impact on different cultural groups. In particular, language policies must always affect the prospects of different cultural groups:

The idea that government could be neutral with respect to cultural groups is patently false...When the government decides the language of public schooling, it provides what is probably the most important form of support needed by cultural structures, since it

**guarantees the passing on of the language and its associated traditions and conventions to the next generation.**

**Conversely, it is very difficult for languages to survive in modern industrialized societies unless they are used in public life.<sup>123</sup>**

**While Kymlicka does, on occasion, argue that language and education policies are also often justified by their proponents as support for a particular language or culture and thus violate justificatory neutrality as well, the fundamental thrust of what I have labelled the “top down” argument is consequentialist.<sup>124</sup> For Kymlicka’s position to be consistent, consequences as they relate to linguistic and cultural groups must be different in (normative) kind from consequences for the survival and well-being of groups defined in other ways. Demonstrating this is the function of what I have termed the “bottom up” argument.**

**The argument begins by classifying the cultural diversity of contemporary societies according to its source. One type of diversity arises in situations where more than one distinct cultural group has been incorporated into the same state, through conquest, federation or other means. Such groups may continue to occupy their traditional territories, where they may or may not continue to form a majority, and where they may or may not exercise majority control over a subordinate (to the national state) political structure. Often they wish, and are sometimes able, to maintain a cultural and/or linguistic identity separate from that of other groups sharing the larger political entity. Kymlicka denotes these groups as ‘national minorities’. The second category of diversity typically arises from migration across state borders. Many countries are the recipients of large numbers of immigrants from cultures which differ significantly from their own dominant majority. The two different types of diversity lead to demands for different types of minority rights and, this is a separate point, the normative justification for liberal states to accede to such demands also differs.**

**National minorities very often want (or at least some members of the minority want) to perpetuate their existence as separate nationalities, either within the existing political unit or as independent states; hence they may demand separate political structures or the strengthening of such structures as they already control. Such “self-government” rights are:**

**...not seen as a temporary measure, nor as a remedy for a form of oppression that we might (and ought) someday to eliminate...these rights are often described as ‘inherent’, and so permanent...<sup>125</sup>**

**In Canada, the demands for self-government by the First Nations and aspirations by some Francophone**

Quebeckers to either strengthen the powers of the existing provincial government or secede from Canada fall into this category. Immigrant groups, on the other hand, usually seek the right to participate fully in the structures and institutions of the dominant society without having to put aside or dissimilate their cultural differences.<sup>126</sup> For cultural differences of this type, the appropriate liberal response is “polyethnic rights” which:

...are intended to help ethnic groups and religious minorities express their cultural particularity and pride without it hampering their success in the economic and political institutions of the dominant society...[polyethnic rights]...not seen as temporary, because the cultural differences they protect are not something we seek to eliminate...[but]...unlike self-government rights, polyethnic rights are usually intended to promote integration into the larger society, not self-government.<sup>127</sup>

Kymlicka’s bottom-up justification for cultural affirmation applies only to national minorities. While Kymlicka cloaks the justification for polyethnic rights in language about the value of cultural membership, it is actually better justified by the standard repertoire of liberal values: inclusion, equal treatment, etc., than by his appeal to the value of cultural membership. This difference in justifications has important implications for government policies.

The key to understanding why Kymlicka believes special cultural rights are justified for national minorities, and only for national minorities, lies in his concept of a “societal culture” which:

...is a territorially concentrated culture, centred on a shared language that is used in a wide range of societal institutions, in both public and private life, such as schools, media, law, economy, government and so forth. Participation in such societal cultures provides access to meaningful ways of life across the full range of human activities, including social, educational, recreational, and economic life, encompassing both public and private spheres.<sup>128</sup>

Only national minorities possess a functioning (or at least a potentially functioning) societal culture, and hence only national minorities can realistically aspire to self-government rights. Immigrant groups must (as a matter of fact and right) content themselves with polyethnic rights. There are problems applying the definition to concrete situations. Is it really the case, for example, that the First Nations of Canada are accurately described as territorially concentrated cultures “centred on a shared language that is used in a wide range of societal institutions” when only two out of some fifty languages—Cree and Ojibway—have mother tongue populations of more than ten thousand?<sup>129</sup> On the other hand, is it self-evident that Spanish speaking, territorially concentrated minorities in parts of the United States do not possess a “societal culture” in spite of the existence of large areas of some cities where it is possible to

both live and work in Spanish?<sup>130</sup> Kymlicka puts forward the existence of historical agreements to support his arguments for self-government rights in circumstances such as that of the First Nations where his societal culture argument appears to have a limited or nonexistent relationship with social reality. He also cites the lack of such agreements in arguing against such rights in other circumstances—Hispanophones in the United States—where the societal culture argument does have sociological relevance.<sup>131</sup>

Kymlicka argues that (one's own) culture has the status of a Rawlsian primary good—i.e., a good not intrinsically valuable in itself but valuable because it is necessary to permit one to choose a way of life or to change one's existing way of life if one so chooses. Culture (one's own) is an essential tool necessary for individual autonomy. Our decisions about how to live our lives are always made within a context of choice provided and structured by our own language and culture. We cannot choose from an infinite range of possibilities; we must select “what we believe most valuable from the various options available”.<sup>132</sup> This range is determined by linguistic and historical circumstances:

Our language and history are the medium through which we come to awareness of the options available to us, and their significance.<sup>133</sup>

Culture, as a context of choice, is different from any of the specific individual characteristics normally thought to comprise a culture:

...cultural membership doesn't involve any necessary connection with the shared ends which characterize the culture at any given moment. The primary good being recognized is the cultural context of choice, not the character of the community or its traditional ways of life which people are free to endorse or not.<sup>134</sup>

This does not mean that a given culture can exist without specific characteristics, but rather that no single characteristic or practice—except language—is essential to the survival of the culture. Kymlicka's preferred example to illustrate what he means by culture as a context of choice is Quebec.<sup>135</sup> Prior to 1960, he argues, Quebec's culture defined itself as French speaking, Catholic and traditional; it subsequently developed rapidly into a French speaking but secular and modern society. On Kymlicka's view, this major change in the characteristics of the society did not represent a change in or loss of the original culture (considered as the primary good of a context of choice). Because the majority continued to speak the same language, the culture survived. Why is it the case that one's own native culture is the necessary primary good rather than any culture that happens to be available? Kymlicka's response is that one's own culture is:

...crucial not just to the pursuit of our chosen ends, but also to the very sense that we are capable of pursuing them efficiently.<sup>136</sup>

Along with Raz, Taylor and Tamir, Kymlicka argues that culture is constitutive of the individual. "People are" he says "bound, in an important way, to their own cultural community" and we cannot:

...just transplant people from one culture to another, even if we provide the opportunity to learn the other language and culture. Someone's upbringing isn't something that can just be erased; it is, and will remain, a constitutive part of who that person is. Cultural membership affects our very sense of personal identity and capacity.<sup>137</sup>

Consequently, facilitating assimilation to another culture is not the moral equivalent of protecting the individual's native cultural structure. Assimilation, especially enforced assimilation, can often have "tragic results"; when the individual is stripped of her cultural heritage, her development is "stunted".<sup>138</sup> Therefore, "we should interpret the primary good of cultural membership as referring to the individual's own cultural community."<sup>139</sup>

Given that one's own cultural structure is a Rawlsian primary good, why is this fact incompatible with benign neglect or a difference-blind distribution of resources and liberties? Liberal justice, Kymlicka reminds us, is founded on "the claim that the interests of each member of the community matter, and matter equally".<sup>140</sup> In a society such as Canada where there are cultural minorities, members of the cultural majority have the economic and political resources to provide themselves with a flourishing cultural structure while minorities, such as Aboriginals, may be unable to protect their cultural structures.<sup>141</sup> But this difference, which arises "from people's circumstances—their social environment or natural endowments" is "clearly not their own responsibility".<sup>142</sup> No one can choose the cultural group into which he or she is born "and so no one should have to pay for the costs imposed by those disadvantageous circumstances".<sup>143</sup> Viewed from this perspective, state support for the protection and promotion of societal cultures is no more a violation of state neutrality than is a policy to redistribute other primary goods with a view to rectifying unjustifiable inequalities. The argument is based squarely on the liberal values of equality and autonomy; culture, as defined, is a Rawlsian primary good which is necessary for autonomous individuals to have an equal opportunity to adopt and revise their individual visions of the good life. Without their cultural contexts of choice, individuals will lead impoverished lives. The argument is not that culture is valuable in and of itself; cultural affirmation is justified because culture is instrumentally necessary for the realization of the foundational values of autonomy and equality.

Immigrant minorities, however, cannot claim to have fully functioning societal cultures in their adopted polities. Their “context of choice”, Kymlicka argues, must of necessity involve “equal access to the mainstream culture(s).”<sup>144</sup> Individual immigrants have, some exceptions aside, willingly “uprooted themselves from their old culture” and rather than attempting to create a separate societal culture in their chosen societies, something which would require considerable state support which is unlikely to be forthcoming, “they are expected to become members of the national societies which already exist in their new country”.<sup>145</sup> Therefore:

...promoting the good of cultural membership for immigrants is primarily a matter of enabling integration, by providing language training and fighting patterns of discrimination and prejudice. Generally speaking, this is more a matter of rigorously enforcing the common rights of citizenship than providing group-differentiated rights. In so far as common rights of citizenship in fact create equal access to mainstream culture, then equality with respect to cultural membership is achieved.<sup>146</sup>

Specific measures may include such things as flexibility regarding public holidays, modifying government uniforms to permit religious and other cultural symbols, and sensitivity to the possible ethnocentrism of state symbols.<sup>147</sup>

The “tragic results” and “stunted development” that accompany the assimilation of national minorities into a different culture are no longer issues when the question is the integration of immigrants. Undoubtedly, Kymlicka is correct in his assumption that generally (but not always) the replication of immigrant cultures in the host country is not feasible, but then it is probably not feasible, or at least not feasible without the expenditure of extraordinary levels of resources (per capita) to create extraordinarily minuscule and artificially supported societal cultures in the case of most First Nations. In any event, feasibility is an empirical question which asks what level of resources would be required to achieve the desired result. Whether or not society **should** expend the resources is, of course, a normative question. Kymlicka’s arguments for special rights for immigrant groups are based on the liberal idea of equal treatment. In this regard, they differ from Taylor’s Tamir’s and Raz’s arguments which are based largely on identity. But Kymlicka’s argument that treating national minorities with equal concern and respect requires state support for the actual structure of their societal culture is, as we saw above, based on the idea that culture is, to some extent at least, constitutive of individual identity. My point is not to offer a detailed critique of Kymlicka’s arguments, but simply to point out that his argument for special rights for

national minorities has similarities to those of Taylor, Tamir and Raz. His arguments for polyethnic rights, on the other hand, are best justified by an appeal to the core liberal value of equal treatment. Although Kymlicka tries to base both sets of values on the value of cultural membership, the two arguments are different and have different implications for citizenship and public reason.

### **3.7. Conclusion**

This chapter presented the arguments of six prominent Affirmationists. My analysis of their varied positions concluded that arguments against the traditional model of citizenship which are based on the substantive inequality and discrimination suffered by individuals because of their cultural or ethnic backgrounds can, to a considerable extent at least, be accommodated by a suitably modified version of benign neglect (which I shall present in Chapter 7). Arguments premised on the normative value of culture, on the other hand, are not compatible with benign neglect, however construed. These arguments generally rely on specific moral psychologies which are held to justify the claim that culture is preeminently important to the well-being of individuals, and that this fact implies a certain right to one's own culture. (The nature, scope and basis of this right is the subject of much debate amongst Affirmationists.) Chapter 4 takes up these arguments from moral psychology and attempts to ascertain whether they can support the claims made in their name.

### **Notes**

1. Nancy L. Rosenblum, Membership and Morals: The Personal Uses of Pluralism in America (Princeton: Princeton University Press, 1998), 339.

2. For a summary of rights claimed see Jacob T. Levy "Classifying Cultural Rights," in Ethnicity and Group Rights, 22-66.

3. Rosenblum, Membership and Morals: The Personal Uses of Pluralism in America, 339.

4. Daniel Weinstock discusses this issue in some detail in "Le probleme de la boite de Pandore," in Nationalite, Citoyennete et Solidarité, 17-40.

5. Rosenblum, Membership and Morals: The Personal Uses of Pluralism in America, 340.

6. Iris Marion Young, "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship," Ethics 99 (January) 1989): 250.

7. *Ibid.*, 250.

8. Young Justice and the Politics of Difference, 157.

9. Young "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship," 50.

10. Ibid., 51.

11. Young, Justice and the Politics of Difference, 9.

12. Ibid., 15. Although Young is careful to argue that "distributive issues are crucial to a satisfactory conception of justice", critics of Affirmationist policy prescriptions such as Barry argue that, in practical terms, such policies do give aid and comfort to opponents of robust state action to foster equality: "The proliferation of special interests fostered by multiculturalism is, furthermore, conducive to a politics of 'divide and rule' that can only benefit those who benefit most from the status quo. There is no better way of heading off the nightmare of unified political action by the economically disadvantaged...than to set different groups of the disadvantaged against one another. Diverting attention away from shared disadvantages such as unemployment, poverty, low-quality housing and inadequate public services is an obvious long-term anti-egalitarian objective." Barry, Culture and Equality, 11-12.

13. Young, Justice and the Politics of Difference, 15.

14. Ibid., 43, 44.

15. Ibid., 43.

16. Young, "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship," 260.

17. Young, Justice and the Politics of Difference, 44.

18. Iris Marion Young, Inclusion and Democracy (Oxford: Oxford University Press, 2000), 87.

19. Ibid., 87-88.

20. Ibid., 88.

21. Ibid., 91.

22. Ibid., 88-89.

23. Young, Justice and the Politics of Difference, 45.

24. Ibid., 38.

25. Ibid., 38.

26. Ibid., 38.

27. Ibid., 49.

28. Ibid., 53.

29. Ibid., 54.

30. Ibid., 57.

31. Ibid., 58.

32. *Ibid.*, 59.
33. *Ibid.*, 59.
34. *Ibid.*, 60.
35. *Ibid.*, 63.
36. *Ibid.*, 184.
37. Kymlicka, Multicultural Citizenship, 224, note 20. Kymlicka is citing from Iris Marion Young, "Together in Difference: Transforming the Logic of Group Political Conflict," in Principled Positions: Postmodernism and the Rediscovery of Value, ed. Judith Squires (Lawrence and Wishart, London), 135.
38. Young, "Together in Difference: Transforming the Logic of Group Political Conflict," 135-136.
39. Anne Phillips, Democracy and Difference (University Park, Pennsylvania: The Pennsylvania State University Press, 1993), 14.
40. *Ibid.*, 6.
41. Anne Phillips, The Politics of Presence (Oxford: Clarendon Press, 1995), 1.
42. *Ibid.*, 1.
43. *Ibid.*, 5.
44. Anne Phillips, "In Defence of Secularism," in Church State and Religious Minorities, ed. Tariq Modood (London: Policy Studies Institute, 1997), 24.
45. *Ibid.*, 25.
46. *Ibid.*, 25.
47. Phillips, The Politics of Presence 39.
48. *Ibid.*, 39.
49. Phillips specifically rejects public (state) recognition of one category of difference: religious difference. She argues that "the secular separation of church from state is still the closest we can get to parity of treatment between those who are religious and those who are not, and between the followers of different religions". Phillips, "In Defence of Secularism," 27. To the extent, therefore, that demands for recognition are demands for the recognition of religiously based cultures or to the extent that cultural difference and religious difference can be assimilated, Phillips is opposed to recognition.
50. Phillips, The Politics of Presence, 176.
51. *Ibid.*, 176.
52. *Ibid.*, 178.
53. *Ibid.*, 182.

54. Charles Taylor, "The Politics of Recognition, in Multiculturalism and "The Politics of Recognition, 25.
55. *Ibid.*, 25.
56. Charles Taylor, Sources of the Self (Cambridge: Harvard University Press, 1989), 27.
57. *Ibid.*, 27.
58. Charles Taylor, "The Politics of Recognition" 28.
59. *Ibid.*, 32.
60. *Ibid.*, 33.
61. *Ibid.*, 37.
62. The analysis is too long to summarize here. Both the historical and philosophical elements are explicated in detail in Taylor, Sources of the Self.
63. Taylor, "The Politics of Recognition," 26.
64. Thomas L. Dumm, "Strangers and Liberals," Political Theory Vol. 22 No. 1 (February 1994): 167-168.
65. Charles Taylor, "Shared and Divergent Values," in Charles Taylor Reconciling the Solitudes (Montreal and Kingston: McGill-Queen's University Press, 1993), 156.
66. *Ibid.*, 157.
67. *Ibid.*, 159.
68. *Ibid.*, 163. Both flourishing and survival are at issue. See Charles Taylor "The Politics of Recognition" 40-41, note 16 where Taylor argues that whatever measures are justified to promote the flourishing of a language and culture are also justified in order to assure its survival into future generations.
69. Charles Taylor, "Shared and Divergent Values", 174-175.
70. *Ibid.*, 175-176.
71. *Ibid.*, 176.
72. Taylor "The Politics of Recognition", 59.
73. Phillips, The Politics of Presence 140. Phillips is citing from Taylor "The Politics of Recognition".
74. Charles Taylor, "Why Do Nations Have to Become State?", in Taylor, Reconciling the Solitudes, 45.
75. *Ibid.*, 48.
76. *Ibid.*, 49.

77. Amelie Okensberg Rorty, "The Hidden Politics of Cultural Identification," Political Theory Vol. 22 No. 1 (February 1994): 154.
78. Tamir, Liberal Nationalism, 33.
79. Ibid., 37.
80. Ibid., 35-37.
81. Ibid., 58.
82. Ibid., 70-72.
83. Ibid., 72.
84. Ibid., 9.
85. Yael Tamir, "Two Concepts of Multiculturalism," in Democratic Education in a Multicultural State, ed. Yael Tamir (Oxford and Cambridge: Blackwell Publishers/The Journal of the Philosophy of Education Society of Great Britain, 1995), 4.
86. Ibid., 4.
87. Ibid., 6.
88. Tamir Liberal Nationalism, 76. Tamir is citing Y. Donstein, "Collective Human Rights of Peoples and Minorities," International and Comparative Law Quarterly 25 (1976): 102-200.
89. Tamir "Two Concepts of Multiculturalism", 6.
90. Ibid., 6.
91. Ibid., 3.
92. Ibid., 6.
93. Ibid., 5.
94. Ibid., 8.
95. Ibid., 10.
96. Ibid., 10.
97. Ibid., 10.
98. Ibid., 10.
99. Ibid., 11.
100. Ibid., 11-12..
101. Ibid., 13.
102. Ibid., 13.

- 103.Ibid., 13.
- 104.Ibid., 6.
- 105.Joseph Raz, "Multiculturalism," Ratio Juris Vol. 11 No. 3 (September 1998): 196.
- 106.Ibid., 197.
- 107.Ibid., 197.
- 108.Ibid., 198.
- 109.Margalit and Raz, "National Self-Determination," 439-461.
- 110.Ibid., 446.
- 111.Ibid., 444.
- 112.Ibid., 449.
- 113.Margalit also offers more philosophical reasons for respecting culture arguing that "Human beings have a right to culture—not just any culture but their own". This is because "Culture plays a crucial role in shaping the personalities of individuals, especially in those aspects that they and their environment consider central for constituting their personal identity". Consequently, "The right to culture is...not only the right to identify with a group but the right to secure one's personal identity". Avishai Margalit and Moshe Halbertal, "Liberalism and the Right to Culture," Social Research Vol. 61, No. 3 (Fall 1994): 491-510 at 491 and 501-502.
- 114.Joseph Raz, Ethics in the Public Domain (Oxford,: Clarendon Press, 1994), 176.
- 115.Ibid., 177.
- 116.Ibid., 177-178.
- 117.Ibid., 178.
- 118.Raz, "Multiculturalism," (Ratio Juris) 203. See also Raz, Ethics in the Public Domain, 157.
- 119.Raz, "Multiculturalism," (Ratio Juris) 204.
- 120.Kymlicka, Liberalism Community and Culture, 76-77. Kymlicka is citing from John Rawls, "Social Unity and Primary Goods," in Utilitarianism and Beyond ed. A. Sen and B. Williams (Cambridge: Cambridge University Press). See also Will Kymlicka, Contemporary Political Philosophy (Oxford,: Clarendon Press, 1990), 229: "I believe that liberal neutrality is the most likely principle to secure public assent in communities like ours, which are diverse and historically exclusionary".
- 121.Kymlicka, Liberalism Community and Culture, 97 note 2.
- 122.Kymlicka, "Liberal Individualism and Liberal Neutrality", 891.
- 123.Kymlicka "The Sources of Nationalism (Commenting on Charles Taylor)", 58. For a similar consequentialist argument see Kymlicka, Multicultural Citizenship. 108 where he extends the argument beyond language to say:

Government decisions on languages, internal boundaries, public holidays, and state symbols unavoidably involve recognizing, accommodating, and supporting the needs of particular ethnic, and national groups. The state unavoidably promotes certain cultural identities, and thereby disadvantages others.

124. See, for example, Will Kymlicka, "Ethnic Associations," in Freedom of Association, ed. Amy Gutman (Princeton: Princeton University Press, 1998), 189 where he argues that "Far from being neutral with respect to citizens ethno-cultural identities, state decisions regarding official language, core curriculum in education, and the requirements for acquiring citizenship all were made with the express intention of diffusing a particular culture throughout society and of promoting a particular national identity..." Kymlicka is, in this passage, referring to the history of the United States but it is clear that he believes a similar argument could be made about other liberal democracies. He does not, however, discuss what the justifications were for wanting to promote a particular national identity or language. I will argue that there is a difference between promoting, or at least not interfering with the dominance of, a particular language because it is a necessary tool of communication and promoting a language because it is inherently valuable.

125. Kymlicka, Multicultural Citizenship, 30.

126. *Ibid.*, 15.

127. *Ibid.*, 31.

128. Kymlicka, "Ethnic Associations", 180. In Multicultural Citizenship Kymlicka defines a culture as "an intergenerational community, more or less institutionally complete occupying a given territory or homeland, sharing a distinct language and history." 18.

129. Statistics Canada, Canadian Social Trends No. 51 (Winter, 1998): 8-17.

130. Kymlicka addresses this issue, unsatisfactorily in my view, in Multicultural Citizenship 15-16. For a good discussion of the linguistic issues raised by widespread Hispanophone immigration to the United States see Rudolfo O. DeLaGarzo and Armando Trujillo, "Latinos and the Official English Debate in the United States," in Language and the State, ed. David Schneiderman (Cowansville, Quebec: Les Editions Yvon Blais Inc, 1991): 202-229.

131. Kymlicka, Multicultural Citizenship 116-120.

132. Kymlicka, Liberalism, Community and Culture, 164. See also Multicultural Citizenship, 82-84.

133. Kymlicka, Liberalism Community and Culture, 165.

134. *Ibid.*, 172.

135. See *Ibid.*, Chapter 8 and Multicultural Citizenship, 104-105.

136. Kymlicka, Liberalism Community and Culture, 176.

137. *Ibid.*, 175.

138. *Ibid.*, 176.

139. *Ibid.*, 177.

140. *Ibid.*, 182.

141. Kymlicka, Multicultural Citizenship, 109.
142. Kymlicka, Liberalism Community and Culture, 186.
143. *Ibid.*, 186.
144. Kymlicka, Multicultural Citizenship, 114.
145. *Ibid.*, 114.
146. *Ibid.*, 114.
147. *Ibid.*, 114-115.

#### **4.0 The Moral Psychology of Citizenship**

**Affirmationist arguments for the normative value of culture appeal to the importance of individual identity (Taylor and Raz), the need for a secure linguistic and cultural framework to support autonomy (Kymlicka), or some combination of the two (Tamir and Kymlicka). Individuals not accorded appropriate state recognition and institutional support for their cultural identities suffer harm; a lack of societal respect for their cultural identities damages their self-respect; the failure to protect individuals' native culture inhibits their autonomy; or other grave harm results. These arguments have their foundations in concepts of moral psychology: respect and self respect; dignity and recognition; and autonomy. If the Affirmationists' moral psychologies and their interpretations of these concepts were clear and convincing, there would indeed be a strong case for their policy positions. It is my position that the interpretations of moral psychology offered by the Affirmationists are not clear and convincing; they are controversial and often incoherent.**

**Moral psychology is found in much political philosophy. What it is, however, is generally not specified. The obvious question—how does it differ from empirical psychology?—is not answered and often not posed. I have no answer of my own to offer. Rawls provides some thoughts on the issue which I will appropriate as my starting point.**

**Moral feelings and sentiments, says Rawls, differ from “the natural attitudes” in that:**

**...the person's explanation of his experience invokes a moral concept and its associated principles. His account of his feelings makes reference to an acknowledged right or wrong.<sup>1</sup>**

**Moral psychology is non-empirical and is characterized by the type of explanations it offers:**

**...moral sentiments are not to be identified with characteristic sensations and behavioural manifestations, even if these exist. Moral feelings require certain types of explanations...the moral attitudes involve the acceptance of specific moral virtues; and the principles which define these values are used to account for the corresponding feelings. The judgements that elucidate different emotions are distinguished from one another by the standards cited in their explanation. Guilt and shame, remorse and**

**regret, indignation and resentment, either appeal to principles belonging to different sets of morality or invoke these from contrasting points of view.<sup>2</sup>**

**The potential problems of using moral psychology to justify a political position are evident. Such justifications are clearly in danger of circularity—a political position is justified by moral psychology, but our moral psychology depends on “principles belonging to different sets of morality”. Secondly, moral psychology cannot be detached from its empirical counterpart. Whether or not state policies and actions do in fact evoke the sorts of responses moral psychology postulates remains an empirical issue; whether or not I feel shame or a loss of self-respect when faced by the state’s lack of recognition for my culture is at least in part an empirical question.**

**This chapter discusses the key concepts of moral psychology used by Affirmationists to support their policy arguments. I do not discuss any theorist’s moral psychology in detail. My approach is first to argue that their key moral psychological concepts lend themselves to multiple interpretations, second to demonstrate that they cannot carry the justificatory burden the Affirmationists place on them, and third, to dispute the value of such concepts for the justification of liberal rights and freedoms. My aim is to call into question the coherence and logic of the moral psychology Affirmationists utilize to ground their claims that culture has a particular normative value, and their related claim that failure by the state to recognize and promote individuals’ cultures will inevitably cause grave psychological and social damage. The goal is not, however, to deny that many, perhaps most, individuals highly value their language, culture and religion, as they do their professions, their intellectual interests, their families, their charitable interests, etc. Very likely they do, and, consequently it is to be expected that they may wish to promote their cultural interests through the normal democratic processes of debate, bargaining and voting; I will elaborate on this in Chapter 6. My point in this chapter is that nothing in the Affirmationists’ moral psychologies justifies the raising of cultural interests above individuals’ other interests; nothing justifies considering that it**

gives rise to a special category of rights. Section 4.1 addresses respect and self-respect; 4.2 deals with recognition and dignity, and 4.3 with the value and worth of autonomy, both as a postulate of moral psychology and as a liberal value. In Section 4.4, I will put forward the view that the moral psychology underlying the claims of the Affirmationists is controversial at best and that a truly liberal moral psychology would be (almost) no psychology at all.

## **4.1 Respect and Self-Respect**

### **4.1.1 Respect**

“Self-respect”, writes Robin G. Dillon, “involves perceiving and valuing oneself as a being of genuine worth, someone whom others would have reason to respect”.<sup>3</sup> Taylor informs us that:

The politics of equal dignity is based on the idea that all humans are equally worthy of respect. It is underpinned by a notion of what in human beings commands respect, however we may try to shy away from this “metaphysical” background.<sup>4</sup>

And it is not just ourselves or other individuals that deserve respect. In this multicultural world it is often demanded “that one accord equal respect to actually evolved cultures...the demand for equal recognition extends beyond an acknowledgement of the equal value of all humans’ potentiality, and comes to include the equal value of what they have made of this potential in fact”.<sup>5</sup> One must, then, respect oneself, other individuals and all “actually evolved cultures”. What does it mean, if anything, to respect oneself, another individual, or a culture?<sup>6</sup>

One sense of “respect” is more or less equivalent to “acknowledge and accept” or tolerate. When I apply this conception of respect to persons, for example, I respect your right to free speech (practice of religion, etc.) when I acknowledge that you have this right, and I accept your use of the right in that I neither personally interfere with your exercise of the right nor support state interference. Respect, in this sense, implies absolutely nothing about my evaluation of you, your moral worth, your intelligence, etc., or about the intellectual or moral value of the content of your speech. I

respect your right to postulate that the world is flat and that you were abducted by aliens last week. This thin version of respect, a version akin to toleration, is, I argue, the conception that most easily fits into a political conception of liberalism; it is only tenable when applied to persons; it makes little or no sense to talk about a duty to respect culture qua culture. When the respecting agent is the state, the best that can be expected is a lack of active disrespect.

Stephen L. Darwall usefully conceptualizes respect as taking two forms: recognition respect and appraisal respect.<sup>7</sup> Recognition respect is:

...a kind of respect which can have any of a number of different sorts of things as its object and which consists, most generally, in a disposition to weigh appropriately in one's deliberations some feature of the theory in question and to act accordingly.<sup>8</sup>

This conception of respect can be interpreted in a manner consistent with the idea of respect outlined above. When I 'respect' a 'thing'—the thing in question being a person—I must take into account that he or she is an individual, a fellow citizen perhaps, who possesses rights, rights equal to my own.

Appraisal respect, on the other hand demands appraisal along some continuum of value of the worth of the respected person or culture:

...its exclusive objects are persons or features which are held to manifest their excellence as persons or as engaged in some specific pursuit...[it]...consists in an attitude of positive appraisal of that person either as a person or as engaged in some particular pursuit. Accordingly the appropriate ground for such respect is that the person has manifested characteristics which make him deserving of such positive appraisal...the appropriate characteristics are those which are, or are based on, features of a person which we attribute to his character.<sup>9</sup>

Recognition respect calls forth a moral response from the individual according to it. The appropriate moral response "consists, most generally, in a disposition to weigh appropriately in one's deliberations some feature of the thing in question and to act accordingly".<sup>10</sup> If we say that recognition respect is owed to all persons qua persons, this:

...is to say that they are entitled to have other persons take seriously and weigh appropriately the fact that they are persons in deliberating in what to do.<sup>11</sup>

Appraisal respect, on the other hand, does not necessarily make any moral claims on the person who accords it. If I accord appraisal respect to aspects of a person's character or to any particular actions or activities undertaken, I am not normally under any moral obligation to take any particular action. I am not, for example, morally obligated to take her views into account in any special way because of the respected characteristic (although if the characteristic embodies particular expertise, it may be prudent for me to do so).

It often seems that practitioners of identity politics are demanding appraisal respect for cultures and their individual members qua members. Most Affirmationist theorists, however, do not argue that we must accord appraisal respect, that we must positively value the content of a culture or the character of an individual. Taylor, for example, argues only that we should start with the "presumption...that all human cultures that have animated whole societies over some considerable stretch of time have something to say to all human beings".<sup>12</sup> The "presumption" is simply a "starting hypothesis" whose "validity...has to be demonstrated concretely in the actual study of the culture".<sup>13</sup> Appraisal respect must be earned according to some standard. It is accorded when an individual or a culture demonstrates that she or it is worthy of it. The particular standards used will depend upon the individual or group doing the appraising: a devoutly religious individual or culture may merit favourable appraisal by some or contempt by others; artistic creation may be highly valued in some cultures and dismissed as blasphemy in others; and certain forms of sexual activity may be deemed expressions of human love by some and condemned as abominations by others. To demand that individuals accord this type of respect to (all) other individuals or to cultures would be impossible or contradictory; I cannot force myself to accord appraisal respect (although, obviously, I could through education for example, come to better understand the individual or cultural practice in question and thus, sometimes, increase the possibility of according such respect. It is also possible, of course, that

further understanding will lead to less rather than more respect.) For the state to accord or explicitly withhold appraisal respect would be a violation of liberal neutrality; it would represent an endorsement of one or more comprehensive views or theories of the good.

This leaves recognition respect as a viable candidate for inclusion in a liberal moral psychology of citizenship. Recognition respect is based on the presence of some feature or characteristic and calls for a particular moral response. What then is the appropriate moral response by individuals and the liberal state? What are the characteristics or features that evoke the response? From the liberal perspective, the appropriate response is to treat individuals with, in Dworkin's phrase, equal concern and respect. Adeno Addis interprets this to mean that we must go beyond mere toleration and "engage" not so much the individuals as their "traditions and cultures," their "forms of life":

To treat individuals with "equal respect" entails at least partly, respecting their traditions and cultures, the forms of life which give depth and coherence to their identities. And to treat these forms of life with respect means to engage them, not simply to tolerate them as strange and alien.<sup>14</sup>

But while it may be the case that the individual must engage other individuals and this engagement may require an engagement with a form of life to the extent of attempting to understand it, the end result may simply be just toleration. After I engage and understand, I may regard the individual or culture as worthy only of toleration. To demand more would require that I accord appraisal respect; in effect, such a demand would fail to take moral and cultural diversity seriously. Thomas A. Spragens, Jr. gives a succinct argument in support of this point:

...it may seem benign, enlightened, and morally uplifting to insist that every aspect of everyone's identity be "publicly affirmed and recognized". But so long as a society is morally and religiously pluralistic, so long as it encompasses a variety of different and in some respects mutually antagonistic ways of life and moral commitments, such a demand is not merely unrealistic but morally improper...such a demand is in a sense self-contradictory. To demand that you "affirm" my identity, when that identity inextricably incorporates behaviour that the premises underlying your identity

construes as immoral, is to demand that you effectively renounce your own identity. Like it or not, your toleration is the most I can reasonably expect and the most I can properly demand.<sup>15</sup>

The demand that the state, as opposed to the individual citizen, accord positive respect beyond acknowledgement and acceptance is not only problematic in the same way it is for individuals— that is, it may require positive state recognition for practices and attitudes that many individual members of society condemn—it is probably impossible in a plural society. Spragens provides a (hypothetical) example of the problems when issues of cultural value and worth are assumed to be public matters suitable for state adjudication.<sup>16</sup> Imagine, he says, a society composed of individuals belonging to two cultures: devout Muslims and those whose culture places a high value on pork—its eating, cooking, and related aesthetic matters. Clearly, the two views of the good life are incompatible, but as long as the relevant practices of the two groups are considered to be private matters (this does not mean exercised in private, but that they are matters for private judgement) rather than practices which require state declarations of respect and recognition, it is possible at least to imagine the two groups co-existing in the same political state as long as the state doesn't take sides, as long, that is, as the state remains indifferent and practices benign neglect. When the practices are construed as requiring state affirmation, however, the situation becomes untenable. In Spragens's words, a demand for:

...”affirmation and recognition”...leads to the acknowledgement of an element of moral and political tragedy...that cannot be entirely reconciled or eliminated...some “identities” or moral beliefs are not merely different but contradictory.<sup>17</sup>

There is, therefore, “a practical self-contradiction” in the demand for state affirmation of cultural identity; the extent of the self-contradiction depends on the sociological make-up of a given society.<sup>18</sup> Toleration and respect for individuals' rights to exercise private judgement is often the best that can be hoped for. Toleration by the state, however, requires that the state accord it without any

**implication that the thing tolerated is in any sense undesirable; the state must simply be indifferent.**

**The appropriate moral response to an entity entitled to recognition respect is toleration and a willingness to engage in reasoned political dialogue. The recipient entity believed to be entitled to such respect has, until the advent of identity politics, been the individual person. Most “advocates of respect for persons maintain that they are relying on and developing a central feature of Kant’s moral philosophy”.<sup>19</sup> While Kant usually talked about respect as the attitude due the moral law, the idea that individuals (all rational beings in Kant’s terms) are also owed respect can be derived from the “kingdom of ends” formulation of the categorical imperative.<sup>20</sup> I will present no arguments to support the premise that all individuals—equally-- are the appropriate recipients of recognition support as I have defined it; there is no viable political philosophy on today’s horizon that argues for the inherent political inferiority or superiority of any one category of humans as compared to another. Nor will I discuss such issues as the respect due children, the insane or the mentally challenged. Respect, as I have defined it, is equally due to all mentally competent adults.**

**With regards to the possibility that respect might be due to “cultures” as opposed or in addition to the respect owed to their individual members, I assert the largely unargued position that beyond the respect owed to individuals who instantiate a particular culture, nothing is due “culture” itself. Any respect owed to a culture is derivative from and dependent upon the idea that individuals are due respect. There exists no good liberal arguments for respecting or recognizing culture as such.**

**Precisely why mentally competent adult humans are owed respect in the form of toleration and respect for their character as rights-bearing entities is another issue which I don’t propose to address in any detail. Again, the grounds used by liberals to support their (various) positions are often Kantian in origin. Rationality is one possibility:**

**...the legislators [in the kingdom of ends] regard the rationality of each member as unconditionally and incomparably worth preserving, developing, and honouring. The**

set of traits Kant calls “rational nature” or “humanity” is not something which distinguishes one man from another but is something which men have in common and which marks them off from animals.<sup>21</sup>

Rawls takes this position when he argues that “the persons in the original position are rational...[and]...thought to have a coherent set of preferences between the options open to him”.<sup>22</sup> In addition:

Moral persons are distinguished by two features: first they are capable of having (and are assumed to have) a conception of their good (as expressed by a rational plan of life); and second they are capable of having (and are assumed to acquire) a sense of justice, a morally effective desire to apply and act upon the principles of justice, at least to a certain minimum degree.<sup>23</sup>

Equal respect and equal justice are owed to all “those who have the capacity to take part in and to act in accordance with the public understanding of the initial situation”.<sup>24</sup> Having a “moral personality” in this sense is “defined as a potentiality that is ordinarily realized in due course;” it “is a sufficient condition for being entitled to equal justice”.<sup>25</sup> All mentally competent adult humans are assumed to have the capacity.

An additional (Kantian) justification which is often advanced as a justification of respect is the capacity of autonomy, the ability to choose among life’s various possibilities. This view is characteristic of comprehensive liberalism; I will address the issue in a separate section of this chapter.

#### 4.1.2. Self-Respect

“The most important primary good” opines Rawls “is that of self-respect”. Self-respect (or self-esteem)” may be defined, he says, “as having two aspects”:

First...it includes a person’s sense of his own value, his secure connection that his conception of his good, his plan of life is worth carrying out. And second, self-respect implies a confidence in one’s ability, so far as it is within one’s power, to fulfill one’s intention...Without it [self-respect] nothing may seem worth doing, or if some things have value for us, we lack the will to strive for them...the parties in the original position would wish to avoid at almost any cost the social conditions that undermine

self-respect.<sup>26</sup>

Primary goods, let us remember, are “goods [that] normally have a use whatever a person’s rational plan of life”.<sup>27</sup> Rawls distinguishes between “social primary goods” which are “at the disposition of society”—rights, liberties and opportunities, and income and wealth—and natural primary goods “such as health and vigour, intelligence and imagination” which “although their possession is influenced by the basic structure...are not so directly under its control”.<sup>28</sup> The implication is that the just state cannot guarantee the provision of such goods and therefore does not have the same obligation to ensure their distribution according to the appropriate distributional principle as it has in the case of social primary goods. Self-respect, the social bases of self-respect, is, however, considered a social primary good. As noted above, these are conceptualized as divided between rights and liberties, which have lexical priority and the equality of which cannot be compromised, and income and wealth the equality of which may be compromised to the extent that such compromises serve to benefit the material position of society’s least well-off members. Although I am unable to find a specific textual reference, it would seem logical that the social bases of self-respect, as the most important primary good, falls into the same category as rights and liberties; equal distribution is not subject to compromise even in order to benefit the least well-off.

Given its position at the apex of the primary goods hierarchy, Rawls has remarkably few suggestions as to what the state must do in order to fulfill its duty to deliver self-respect in equal doses to all citizens. Equal self-respect seems rather to follow, almost automatically, from the just state; if the state is just in its distribution of other primary goods, citizens will have equal self-respect:

...by arranging inequalities for reciprocal advantage and by abstaining from the exploitation of the contingencies of nature and social circumstances within a framework of equal liberties, persons express their respect for one another in the very constitution of their society. In this way they ensure their self-respect as it is rational for them to do.<sup>29</sup>

Rawls recognizes that self-respect or self-esteem (Rawls conflates the two) is largely the product of civil society rather than of state action:

...what is necessary is that there should be for each person one community of shared interests to which he belongs and where he finds his endeavours confirmed by his associates. And for the most part this assurance is sufficient whenever in public life citizens respect one another's ends and adjudicate their political claims in ways that also support their self-esteem.<sup>30</sup>

The state's role is largely limited to the equal provision of rights and liberties to all citizens:

The bases for self-respect in a just society is...the publicly affirmed distribution of fundamental rights and liberties. And this distribution being equal, everyone has a similar and secure status when they meet to conduct the common affairs of the wider society. No one is inclined to look beyond the constitutional affirmation of equality for further political ways of securing his status.<sup>31</sup>

Self-respect on Rawls's account is, therefore, a social primary good essential for the well-being of all, but a primary good which the just state need do nothing in particular to deliver; it is secured by the provision of the other social primary goods.

This argument for self-respect as a primary good cannot be used as independent support for cultural affirmation. Self-respect is, at the level of state action, achieved by the equal provision of rights and liberties. Unless a separate argument is forthcoming that there exists a right to culture which should count among the rights the state must equally guarantee, there is little or no support for positive cultural affirmation in Rawls's view that self-respect is a primary good. At the individual level, self-respect is achieved by an "active participation in associational life" and "this contradicts the view that self-worth derives from racial or cultural 'identity'".<sup>32</sup> Nevertheless, there is little doubt that conceptions of self-respect and its importance underlie many Affirmationist arguments.

Rawls uses the terms self-respect and self-esteem interchangeably. The view that the two are the same is problematic and has been widely criticized. In an oft cited article, David Sachs distinguishes between them by noting that:

(a) one can have excessive or unwarranted self-esteem but not too much or unwarranted self-respect; (b) maintaining one's self-respect is a ground for self-esteem, but not the reverse; (c) a person may have little or no self-esteem...even though his self-respect is intact; but (d) it is difficult to imagine a socialized rational human being who utterly lacks self-respect.<sup>33</sup>

In Sachs's words:

If you tell someone that he should respect a certain person you may or may not be telling him that he should esteem everybody...[therefore, it is] obvious: that respecting persons and esteeming them are not the same. The situation is similar with self-respect and self-esteem...although at times "self-respect" and "self-esteem" are used interchangeably, self-respect and self-esteem are not identical.<sup>34</sup>

The difference between self-respect and self-esteem is in some ways similar to the difference between recognition respect and appraisal respect. Elizabeth Telfer, for example differentiates between "conative self-respect" and "estimative self-respect".<sup>35</sup> Conative self-respect is, roughly speaking, a moral attitude; it is:

...a desire not to behave in a manner unworthy of one-self, or a disposition which prevents one from behaving in a manner unworthy of oneself.<sup>36</sup>

Estimative self-respect by contrast is similar to appraisal respect; it is "some kind of favourable opinion of oneself".<sup>37</sup> Conative self-respect is not Rawls's self-respect, nor is it the conception of self-respect relevant to affirmationist arguments. It is perhaps relevant to issues of personal morality but has little to say about political questions. Those who value conative self-respect:

...argue that morality requires that we maintain our self-respect and that consequently, certain acts are morally required and others are prohibited [for individuals].<sup>38</sup>

Proponents of estimative self-respect as a political variable, on the other hand, generally argue:

...that self-respect is an important good to anyone who has it and on this basis they support institutions and policies that affirm persons' self-respect and object to those that undermine self-respect.<sup>39</sup>

The policies required to promote self-esteem are, however, controversial.

Rawls, as we saw above, limits the state's role in fostering self-esteem to the equal provision

of rights and liberties and the support of a civil society capable of producing a range of associations in which individuals may feel good about themselves. Robert E. Lane criticizes this approach as not according sufficient importance to the state's role in fostering self-respect; citizens' self-esteem depends much more on non-political variables such as relative economic status than it does on having equal political rights and liberties:

Rawls invites us to consider ourselves political persons first and only secondarily breadwinners, workers, professionals, even parents and friends. Our self-esteem is given by our equal political statuses, not by the unequal statuses that the difference principle allows...this is implausible. Political life is simply not important enough to bear this burden.<sup>40</sup>

Lane does not conclude that the government should not be in the business of promoting self-esteem; this, he says, would be impossible:

All governments are in the business of promoting and discouraging and distributing and redistributing the conditions that facilitate self-esteem...All government policies give significance, power, honour, and opportunities to some and not to others...The most important issue is whether or not these distributions shall be "delegated" to the market and the family and other agencies, and, if delegated, whether or not the government shall retain a tutelary interest.<sup>41</sup>

Lane further argues that it is impossible to "say that any particular self-esteem is an intrinsic or a primary good, or even a good at all. until we know the bases for that esteem."<sup>42</sup> For example, the basis of one person's self-esteem may be the denial of the equal moral standing of some one else. This is most likely to happen when self-esteem is largely based on ascriptive characteristics such as race, language or culture. In addition, self-esteem which derives from ascriptive characteristics rather than from positive individual achievement lacks social utility in that it does not promote qualities, characteristics and actions which are socially desirable.<sup>43</sup>

Rosenblum approaches the question of self-respect and the state from a different perspective, questioning whether or not equal rights and liberties are even necessary for self-respect. She accepts Rawls's position that "self-respect is rightly characterized as a 'primary good', vital to well-being",

but goes on to argue that:

We know little about the conditions that instill self-respect,...apart from the genuine need for basic trust in childhood...We know even less about how self-respect is damaged or reversed; in particular, what conditions exacerbate or mitigate the effects of the public stigma of second-class citizenship.<sup>44</sup>

There is no question that state actions may denigrate the public standing of certain groups:

Historically, certain barriers and exclusions have been inescapable marks of unfavourable public standing in the United States. In a political society with a public ideology of political equality...to be denied the vote was to be degraded.

Second-class citizenship is also sanctioned by diluting a group's vote, through gerrymandering, for example...

The message of second-class citizenship is also communicated when the exercise of a right is frustrated or conceded in a manner that is grudging, humiliating, or effectively punitive.<sup>45</sup>

But Rosenblum denies "the assertion that second-class citizenship inexorably injures self-respect."<sup>46</sup>

Moreover, linking public standing and self-respect is bad public policy. First, the linkage is not necessary in order to defend equal citizenship:

...the admonition that second-class citizenship is intolerable is not enhanced by heaping on the presumption of injury to self-worth. Its "elemental wrongness" is unchanged, whether or not victims suffer. The obligation of democratic government...to ensure equal public standing and refrain from public shows of disrespect is not diminished by the fact that self-respect may be invulnerable to these assaults.<sup>47</sup>

And second, "By tying self-respect to public standing, defending oneself against discrimination becomes a moral imperative".<sup>48</sup> It places a heavy moral burden on those who suffer discrimination; it, in effect, brings Telfer's conative self-respect into the political sphere where it does not belong. We should "distinguish having and exercising rights claims from self-respect".<sup>49</sup> Rosenblum concludes:

...it is a failure of moral imagination to think that public standing is the sole, chief, guaranteed, or necessary condition of self-respect. After all, the dynamic frequently works in reverse. Self-respect bolsters us against slights and prejudices, social exclusion, second-class membership and even second-class citizenship.<sup>50</sup>

Lane's and Rosenblum's arguments, considered together, provide a substantive critique of the

view that self-respect is an essential component of the moral psychology of liberal citizenship. Self-respect may well be an empirical psychological necessity if individuals are to lead fully functional and flourishing lives, but as Rosenblum argues, we know little about the necessary and sufficient conditions for its development. We know even less about what the role of the state is or could be in the process. Perhaps Lane's argument that the state can do more for self-esteem through redistribution policies than it can in other areas is true, perhaps not. And as Rosenblum claims, postulating a right to the social bases of self-respect is simply not necessary for the liberal requirement that the state treat its citizens with equal concern and respect. The political debate about what it means for the state to treat its citizens in this manner is not advanced by unsubstantiated, and probably unsubstantiable, claims that this or that policy is required for the self-esteem of this or that particular group of citizens.<sup>51</sup>

The above considerations, I think, are sufficient to justify rejecting self-respect as a component of a moral psychology of citizenship. Even if, however, one were to accept the idea that the social bases of self-respect are a primary good and that culture is necessary for this, the state is still not necessarily justified in affirming and promoting any one culture. I will close this section with a brief exposition of this argument.

Daniel M. Weinstock argues that Rawls's political liberalism does successfully tie self-respect and culture in such a way as to demand state support for, if not affirmation of, culture. He claims that Rawls's political liberalism shows a "greater appreciation of the importance of citizens' embeddedness in particular communities differing from one another in their moral and cultural orientation." This, in effect, creates a right to culture which underpins the need for the social bases of self-respect:

...he [Rawls] must accept that the social basis of self-respect is violated in cases where the potential disappearance of one's cultural community is met with indifference by

one's fellow citizens, or with the claim that there is nothing of moral importance that one can draw from one's own culture that cannot also be drawn from the cultures with a higher chance of survival...If self-respect is a primary good, then the social conditions which underpin it must be distributed fairly.<sup>52</sup>

This requires that all cultural communities be treated equally; cultural protection for one group cannot be "at the expense" of other groups:

A policy which affirmed the protection and promotion of one particular sub-community's culture as being of special importance would not be ensuring the social bases of self-respect for members of other cultures within the broader community, unless grounds of particular kind could be adduced for this prioritization.<sup>53</sup>

Weinstock further argues that "grounds of a particular kind" would include "the greater risk faced by that cultural community of disappearing, combined with a plausible case...that the granting of the social bases of self-respect to the members of other communities would increase these risks".<sup>54</sup> Thus, he argues, Rawlsian liberalism can:

...not only...recognize a stable cultural structure as a primary good for members of this and of all subsequent generations, it can also, in virtue of the central primary good of self-respect, accommodate...the claim that the goods which accrue to them [citizens] through their membership in a cultural form of life should be derived from their participation in **this particular community**...<sup>55</sup>

The argument leads, however, not to state recognition of particular cultures but rather to state neutrality and benign neglect:

The only constraint is that this claim be given political weight regardless of the cultural community from which it emanates. In a culturally diverse society, this constraint will require that government not actively promote any one culture, but rather that it provide its citizens with the means to pursue their lives as communal beings, whatever the culture their community happens to be.<sup>56</sup>

Self-respect requires extensive state action (Lane); the necessary and sufficient conditions of self-respect are unknown (Rosenblum); postulating self-respect is redundant in arguing for equal state treatment (Rosenblum); self-respect demands state neutrality towards culture (Weinstock); self-respect has no place in a liberal moral psychology of citizenship (Bennett).

## **4.2 Recognition and Dignity**

Recognition and dignity are central concepts in Affirmationist moral psychologies offered as justification for the claim that the state has a positive duty to affirm and promote language and culture. While these ideas underlie much Affirmationist thinking, they are most explicitly defended by Taylor. I outlined Taylor's position in Section 3.3 and will not repeat his arguments here; I will focus instead specifically on the idea of human dignity as a political postulate and its recognition as a duty of the just state..

### **4.2.1 Dignity**

What, philosophically speaking, is "dignity"? Michael J. Meyer distinguishes "two senses in which dignity is typically attributed to human beings."<sup>57</sup> Human beings are often said "to express dignity" most often "through some action."<sup>58</sup> People may speak or carry themselves, for example, with dignity. This conception of dignity plays little or no role in Affirmationist moral psychology. In the second sense of the term, "human beings can be said to *have* dignity, even though they are not, in the first sense, always dignified in their behaviour".<sup>59</sup> To have dignity in this sense of the word is "an adjectival rather than an adverbial use of 'dignity'"; it is "an attribution of a characteristic value to human beings".<sup>60</sup> This conception of human dignity "enjoys" as Meyer says "wide use in both contemporary political rhetoric and political philosophy":

...politicians of every conceivable party pay deference to the value of human dignity...political philosophers of almost every persuasion admit its importance...It is difficult to find a political philosopher who does not believe that the dignity of human beings must be protected, even if the proper means of doing so continue to be debated.<sup>61</sup>

It is the question of exactly how to promote and protect the "equal dignity" of all that is at the centre of Taylor's arguments for cultural affirmation.<sup>62</sup>

As Meyer notes, most political philosophers attribute a sense of dignity to humans. Mill, for

example, talks about:

...a sense of dignity, which all human beings possess in one form or other, and in some, though by no means exact, proportion to their higher faculties, and which is so essential a part of the happiness of those in whom it is strong...<sup>63</sup>

But dignity described in this way is not equal dignity. Taylor traces the idea of equal dignity to Rousseau, but it is Kant's formulation(s) of the concept which are central to the contemporary debate. The usual Kantian position is summarized by Hill as follows:

...humanity in each person has dignity...Autonomy is said to be the ground of dignity, and this is a property of legislating to oneself universal (moral) laws without the sensuous motives of fear, hope for reward, and the like...Dignity is repeatedly ascribed to "every rational being" and "rational nature"...<sup>64</sup>

Here we see the ideas of dignity as universal and of autonomy as its ground. I shall discuss autonomy below; in this section I wish to look a little more closely at the idea that Kant attributes dignity universally to all individuals. Meyers argues that "Kant, as a matter of fact, used the notion of dignity in two strikingly different contexts".<sup>65</sup> In addition to the universal ascription of dignity to all rational beings, Kant also "uses and discusses the idea of a dignity for men within traditional social hierarchies"; certain "human beings have a dignity simply in virtue of their higher social status".<sup>66</sup> This view of dignity, common in Kant's time, found its foremost exponent in Edmund Burke. Burke argued that, in general, "the common man or woman has no dignity" of his or own simply on account of his or her personhood. They may, however, have "a dignity by proxy". For Burke, the common individual "finds [his]...dignity and importance not in any way through an appreciation of [his] own position or capabilities, but through an identification with and an appreciation of others".<sup>67</sup> This view—the view that "what dignity the common man has he has, in a way through others"—was challenged by other thinkers such as Thomas Paine and Mary Wollstonecraft who argue for dignity as a universal characteristic.<sup>68</sup>

Kant used the conception of dignity in both senses. He does argue, like Paine and

Wollstonecraft:

...that men and women have dignity, first and foremost, not in virtue of an accident of birth into some social class, but in virtue of some trait had by all of humanity.<sup>69</sup>

He argues that “humanity itself is a dignity”.<sup>70</sup> But he also “makes extensive use of the idea of a dignity within established social hierarchies”.<sup>71</sup> Even the dignity arising out of the status of citizen “is still a dignity born of a social hierarchy” in that “it is not based directly on rationality, and is, therefore, quite different from the dignity of humanity.”<sup>72</sup> Kant does not discuss or resolve the relationship between the two senses of dignity nor does he deal with the possibility that the two senses might conflict.<sup>73</sup>

What is the point of this brief discussion of Kantian dignity? After all, it doesn't really matter what Kant, Burke, Paine or Wollstonecraft thought two hundred years ago. The point is that the concept of dignity is inherently contestable; dignity as a universal quality attributed to all humans is not the same as dignity which is attributed because an individual is socially situated in a certain way. All four of the noted thinkers recognized this. Burke thought that dignity arising from social position was all the dignity there was; Paine and Wollstonecraft opposed this view and argued for universal human dignity; Kant incorporated both sense into his political and moral theory but did not resolve or discuss possible conflicts. The Affirmationists, however, appear not to recognize the difference. The idea that equal dignity is related to an ascriptive characteristic such as the language and culture an individual is born into is more akin to Burke's view than it is to Paine's and Wollstonecraft's.<sup>74</sup> As such there is an inherent tension between this idea of human dignity and the universalism of liberal rights and liberal views of citizenship. This tension does not necessarily mean that the Affirmationist position is wrong (but I think it is); it does mean that the linkage between culture, equal dignity and liberal citizenship is controversial and contestable.

#### **4.2.2. Recognition**

The demand that one's identity must be recognized by others is central to much Affirmationist thinking. In the event it is not forthcoming from the appropriate parties, in the appropriate manner, and appropriately directed towards the appropriate aspects of one's identity, one can, in Taylor's words, "suffer real damage" and "real distortion".<sup>75</sup> I have already discussed this view above; here, I will add a few more general points to that discussion.

What identity is, is a vexed question. Whatever else can be said about the concept of identity, it is clear that different theorists mean different things and, perhaps more importantly, different individuals value different aspects of their identities in different measures. Affirmationists stress language and culture. Is this always, almost always, or just sometimes more important than religion, than occupation, than economic class? There is absolutely nothing in the Affirmationists' arguments sketched in Chapter 3 which permits a definitive answer to this question. And any substantive answer is more likely to depend on empirical psychology rather than moral psychology. Consequently, it will undoubtedly vary widely between individuals and it may well vary between cultures. Whether inter-cultural variations are greater than intra-cultural variations is anybody's guess. Taylor's armchair musings about the dialogical nature of identity formation in modern societies notwithstanding, there is no solid empirical evidence of which I am aware that gives language and culture the hegemonic place in individual psychology that some Affirmationists want to award it.

The question of the recognizing agency—the state—is equally vexatious. Affirmationists offer no compelling arguments as to why (most? many?) individuals would look to the impersonal state for positive reinforcement of their identities. It is perhaps possible to mount an argument that if the state and its agencies positively denigrate some aspect of one's identity—one's language, one's religion, one's occupation, one's gender, one's sexual orientation, one's race, one's colour, one's appearance,

one's hobbies, one's political opinions, etc., etc.— one may suffer some positive (psychological or other) harm. But is there really an argument to be made that one requires positive recognition and affirmation of one's multifaceted identity from the state? It is equally plausible to suggest that positive state recognition and affirmation would, in some quarters, be regarded as something negative rather than positive as in "she is not a 'real' lawyer, she is just a civil service lawyer". Furthermore, when the state does undertake to validate certain aspects of identity, by officially proclaiming "days", for example, does it not simply create a problem where one didn't previously exist? If there were no "days" recognizing aspects of identity, there would be no reason to feel slighted when the state neglects or refuses to declare a day recognizing one's favourite identity component. It is also inevitable in a diverse society that, as noted above, aspects of your identity may directly conflict with aspects of my identity. The road to equal state recognition of all important aspects of everyone's identity is not long and winding; it is not a road at all; it is a swamp.

Let me be clear about the implications that I draw from the above discussion of recognition. Nothing I have said argues against any particular policy to aid and support languages and cultures, freedom of religion, nondiscrimination on account of gender or sexual orientation, etc. People have interests and preferences; and they have the right to pursue those interests and preferences through the political process. Which interests will be respected is an important question the resolution of which is not advanced by postulating a deep (moral?) need for state validation of some but not other interests and preferences. Clearly, some things are more important than other things and some people value certain interests more than others. Arguments for state recognition and support of language and culture should not be privileged from the outset of the political debate.

#### **4.3 Autonomy**

In moral and political philosophy, the concept of autonomy can play many different roles and

is used in sometimes conflicting ways. According to Gerald Dworkin:

...although not used just as a synonym for qualities that are usually approved of, “autonomy” is used in an exceedingly broad fashion. It is used sometimes as an equivalent of liberty (positive or negative in Berlin’s terminology), sometimes as equivalent to self-rule or sovereignty, sometimes as identical with freedom of the will. It is equated with dignity, integrity, individuality, independence, responsibility, and self-knowledge. It is identified with qualities of self-assertion, with critical reflection, with freedom from obligation, with absence of external causation, with knowledge of one’s own interests...It is related to actions, to beliefs, to reasons for acting, to rule, to the will of other persons, to thoughts, and to principles.<sup>76</sup>

Furthermore, it is not likely “that there is a core meaning which underlies all these various uses of the term”.<sup>77</sup> In order to simplify and shorten my discussion, I discuss autonomy from two perspectives: autonomy as a postulate of moral psychology and autonomy as a liberal value.

#### **4.3.1 Autonomy and Moral Psychology**

Any discussion of moral psychology and autonomy must address the question of whether or not individuals have the capacity for independent moral choice. For the moral psychology of citizenship, the issue is what capacity for autonomous choice can be attributed to citizens.

Are individuals morally autonomous in any meaningful sense of the term? Gerald Dworkin states the “most general formulation of moral autonomy” is the view that “A person is morally autonomous if and only if his moral principles are his own”.<sup>78</sup> But what it would mean to have moral principles of one’s own is subject to interpretation. It may require that the person be the originator of his or her moral principles; it may require one to “choose” moral principles; a person may be morally autonomous “if and only if the ultimate source of his moral principles is his will”; or, a person is to be considered morally autonomous” only if he refuses to accept others as moral authorities”, only if “he does not accept without independent consideration the judgement of others as to what is moral correct”.<sup>79</sup>

The most prominent philosopher of moral autonomy is, of course, Kant who famously held

that moral choice should be and, to some extent at least can be, free from sensuous or external motivation. Hill summarizes the point as follows:

...in deliberating and choosing to act, as a rational agent one must take oneself to be deciding between outcomes that are still open, that is, are not fixed by causes operating *independently* of one's deliberation and choice...one must *when deliberating* take the attitude that the choice itself is still "up to oneself".<sup>80</sup>

It is not possible in light of current biological, sociological and psychological knowledge to hold that an individual is capable of making a choice independently of all external causation; nor is it clear what a choice in such circumstances would be about.<sup>81</sup> Nevertheless, it is impossible to envision a liberal political philosophy which does not regard an individual's expressed political preferences and choices as his or her own in one way or another. There would be no reason to even debate whether or not autonomy is a moral value unless one's moral psychology included some notion of autonomy in its ontology.

Whether or not autonomy is, or must be, a foundational liberal value is central to the debate between comprehensive and political liberals. I will discuss this in 4.3.2, but here I wish to note that even political liberals have a moral psychology of citizenship which includes autonomy as a capacity. Rawls, in Political Liberalism, proposes a "political conception of the person" in which "citizens are conceived as thinking of themselves as free in three respects".<sup>82</sup> "Free" in this context is equivalent to "autonomous", although Rawls does beg the empirical (and metaphysical) question of whether or not individuals are *actually* free in the three ways by suggesting that citizens are "conceived" as free, not that they *are* free.

"First", Rawls says, "citizens are free in that they conceive of themselves and of one another as having the moral power to have a conception of the good".<sup>83</sup> This is not to say that they are tied to or constituted by any particular theory of the good:

As free persons, citizens claim the right to view their persons as independent from and

not identified with any particular such conception with its scheme of final ends. Given their moral power to form, revise, and rationally pursue a conception of the good, their public identity as free persons is not affected by changes over time in their determinate conception of it.<sup>84</sup>

The second way “in which citizens view themselves as free is that they regard themselves as self-authenticating sources of valid claims”.<sup>85</sup> Individuals own and are responsible for their claims. If this were not the case, and it is not the case in non-liberal societies:

...their claims [would] have no weight except insofar as they can be derived from the duties and obligations owed to society, or from their ascribed roles in a social hierarchy justified by religious or aristocratic values.<sup>86</sup>

The third way “in which citizens are viewed as free is that they are viewed as capable of taking responsibility for their ends”.<sup>87</sup> They “are thought to be capable of adjusting their aims and aspirations” and “they are viewed as capable of restricting their claims in matters of justice to the kinds of things the principles of justice allow”.<sup>88</sup>

Given that Rawls’s project is to construct a theory of justice which does not depend upon autonomy as a foundational value, we may assume that these three ways in which the citizen is considered to be autonomous form a minimalist moral psychology, minimalist in that the assumptions of autonomy are the weakest possible yet still capable of getting the project off the ground. Nevertheless, all three ways in which citizens are conceived to be free can easily be criticized as inconsistent with empirical reality. Are most people capable of having anything so sophisticated as a comprehensive theory of the good? Are they not rather just bundles of sensuous motivations and irrational prejudices? Are individuals ever the source of their own claims? Are they not often simply repeating the last thing they heard on the Jerry Springer Show? And finally, are individuals really responsible for their claims? Am I responsible for my taste in wine, in sex, in food? And if not in these areas, why in others? All these points are the subject of a vast (philosophical, scientific and other) literature and I will not discuss the issues raised. It is sufficient to note that some moral psychology of

autonomy is necessary even for a political conception of liberalism and that this psychology is by no means uncontroversial.

#### **4.3.2 Autonomy as a Liberal Value**

The value of autonomy is central to much liberal theory. Kant treated autonomy both as a postulate of his moral psychology and as the ultimate value and ground of human dignity: “autonomy is the ground of the dignity of human nature and of any rational nature”.<sup>89</sup> For Kant, autonomy as a value cannot be separated from autonomy as a postulate of moral psychology:

Autonomy...seems to be at once both a condition of the possibility of a categorical imperative and the content of what is commanded by such an imperative.<sup>90</sup>

Mill also makes individual autonomy a central value:

He who lets the world, or his own portion of it, choose his plan of life for him, has no need of any other faculty than the ape-like one of imitation. He who chooses his plan for himself, employs all his faculties. He must use observation to see, reasoning and judgement to foresee,...[etc.]...And these qualities he requires and exercises exactly in proportion as the part of his conduct which he determines according to his own judgement and feelings is a large one. It is possible that he might be guided in some good path, and kept out of harm's way, without any of these things. But what will be his comparative worth as a human being?...Human nature is not a machine to be built after a model, and set to do exactly the work prescribed for it, but a tree, which requires to grow and develop itself on all sides, according to the tendency of the inward forces which make it a living thing.<sup>91</sup>

What is evident from both Kant's and Mill's discussions of autonomy is that the value in question—autonomy—is “internal” in the sense that it is exercised or takes place (if one can talk about a value in this way) inside our minds. It is this internal autonomy which is intrinsically and foundationally important. The internal value then justifies, in a myriad of controversial ways, external autonomy—i.e., liberal rights and freedoms. Meira Levinson, speaking about Mill and Raz in particular, summarizes the role internal autonomy plays in justifying external autonomy as follows:

By positing autonomy as an important liberal value—where autonomy is understood ...to mean the capacity to form a conception of the good, to evaluate one's values and ends with the genuine possibility of revising them should they be found wanting and

then to realize one's revised ends—these theorists argue that substantive liberal institutions can be justified<sup>92</sup>

Unfortunately, this view of the normative value of (internal) autonomy is by no means universally shared. In the first instance, such a view conflicts with many religious perspectives which postulate obedience to sacred authority (however determined) as the supreme normative value. Secondly, the foundational value (if not the value) of autonomy is questioned by such pluralist thinkers as Isaiah Berlin. In Gray's words:

...Berlin's liberalism is not grounded in the ideal of autonomy, even if he is ready to grant that autonomy is a good. Such autonomy-based liberalism, from Berlin's standpoint, elevates a controversial and questionable ideal of life unduly. There are many excellent lives that are not especially autonomous, and which liberal societies can shelter: the life of the nun, of the professional soldier, or the artist passionately devoted to his work, may be lives in which rare and precious goods are embodied, and yet lives that are, in very different ways, far from autonomous.<sup>93</sup>

And finally, there is the commonsense observation that many, probably most, people lead satisfactory (presumably, at least to themselves) lives in which they rarely if ever question any of their fundamental beliefs, let alone undertake a full-scale revision of their theory of the good (assuming they have such a thing).

Theorists who take pluralism seriously have responded to the obvious fact that many, perhaps most, people do not value internal autonomy the way comprehensive liberals do with what has become known as political liberalism. Political liberals want to detach external autonomy—liberal rights and freedoms—from internal autonomy.<sup>94</sup> Rawls is the most prominent exponent of this point of view.

Rawls replaces the acceptance of the foundational value of internal autonomy with acceptance of what he calls the "burdens of judgement"—reasons why reasonable people might reasonably disagree. These reasons include such things as the existence of conflicting evidence, disagreement over the relative importance of different pieces of evidence, incommensurability of values, etc.<sup>95</sup> He

defines a reasonable person, reasonable from the political perspective, as one who accepts that the burdens of judgment will give rise to disagreements which cannot be resolved by appeal to any overriding value such as autonomy:

The evident consequence of the burdens of judgment is that all reasonable persons do not all affirm the same comprehensive doctrine. Moreover, they also recognize that all persons alike, including themselves, are subject to these burdens, and so many reasonable comprehensive doctrines are affirmed, not all of which can be true (indeed none of them may be true). The doctrine any reasonable person affirms is but one reasonable doctrine among others. In affirming it, a person, of course believes it to be true, or else reasonable, as the case may be.<sup>96</sup>

A reasonable person is essentially one who accepts the burdens of reason and their implications, and a reasonable comprehensive view is similarly defined. Alternatively, one could say that a reasonable comprehensive view is any view held by reasonable people. Reasonable people will be able, Rawls says, to reach a moral consensus (as opposed to “just” a live and let live agreement of convenience) on the basic principles of constitutional justice. Each individual’s adherence to the consensus will be supported by his or her own reasonable comprehensive view:

...a political conception of justice is presented as a freestanding view. While we want a political conception to have a justification by reference to one or more comprehensive doctrines, it is neither presented as, nor as derived from such a doctrine applied to the basic structure of society...a distinguishing feature of a political conception is that it is presented as freestanding and expounded apart from, or without reference to any such wider background...[it]...is a module, an essential constituent part, that fits into and can be supported by various reasonable comprehensive doctrines that endure in the society regulated by it.<sup>97</sup>

This leads directly to Rawls’s conception of public reason: the moral consensus about the basic structure of society must be reached by a public debate which is conducted not on the basis of the ideas proposed by the various comprehensive views existing in society, but rather “in terms of certain fundamental ideas seen as implicit in the public political culture of a democratic society”.<sup>98</sup> This consensus supports external autonomy—rights and liberties—without reference to the comprehensive liberal value of internal autonomy.

The success of this approach is debatable and widely debated. I can only note the major lines of criticism. As Meira Levinson notes:

To restrict liberal citizenship to those who take on the burdens of judgement,...is either to exclude a number of people—many more people, I believe, than Rawls means to—or to reconstruct (through political re-education) the boundaries of pluralism itself.<sup>99</sup>

Many religious believers are not able to accept the burdens of judgement; they are sure that their comprehensive view is correct and others are wrong. Non-believers may have difficulty with the view that one must accept a religious world view as in any sense “reasonable”. It is also very possible that Rawls has not succeed in dispensing with internal autonomy:

...insofar as accepting the burdens of judgement requires individuals to gain sufficiently critical distance from their own conception of the good to realize that theirs is not the only reasonable life, Rawls’ political liberalism seems to require that citizens exercise at least a rudimentary level of autonomy.<sup>100</sup>

Another argument takes the position that unless we actually value internal autonomy it is impossible to justify liberal rights and freedoms; unless we value the possibility of revision as well as the pursuit of our comprehensive view, many liberal freedoms are not properly grounded. Taking religion as an example, Kymlicka argues:

A liberal society not only allows individuals the freedom to pursue their existing faith, but it also allows them to seek new adherents for their faith (proselytization is allowed), or to question the doctrine of their church (heresy is allowed), or to renounce their faith entirely and convert to another faith or to atheism (apostasy) is allowed). It is quite conceivable to have the freedom to pursue one’s current faith without having any of these latter freedoms...These aspects of a liberal society only make sense on the assumption that revising one’s ends is possible, and sometimes desirable, because one’s current ends are not always worthy of allegiance. A liberal society does not compel such questioning and revision, but it does make it a genuine possibility.<sup>101</sup>

Meira Levinson points out that Rawls responds to this objection by insisting that it is the existence of the capacity to revise one’s theory of the good (i.e., a point about moral psychology) rather than the value we place upon it which serves to justify liberal institutions.<sup>102</sup> Her response is that the mere

existence of the capacity cannot carry the full load of justification:

...we must have a further reason beyond the mere presence of this capacity to regard it as an important part of even the political conception of the person. Human beings have many capacities...not all of which deserve regard from the state...The only reason for the state to acknowledge one capacity over another is if the former is more worth realizing than the latter.<sup>103</sup>

But Levinson seems to contradict the argument that liberal rights require the value of autonomy when she acknowledges that even if individuals completely lack the capacity for autonomous action (i.e., there is *nothing* there to be valued) the state is not justified in violating the rights supposedly justified by autonomy:

This is not to say that the state should or even can discriminate against individuals who do not fulfill their capacity for autonomous action...So long as people fulfill the basic requirements of citizenship, whatever these may be, they deserve to be treated equally as citizens. Furthermore, individuals are under no obligation to acknowledge that autonomy has value for their own lives.<sup>104</sup>

Somewhat confusingly, confusing for me at least, she concludes that “within the structure of the legitimation project they do need to agree as citizens that autonomy is a value the state should uphold”.<sup>105</sup> It is clear from the context that Levinson means here what I have called internal autonomy. But why is a simple commitment to external autonomy for all citizens not enough?

#### **4.4 The Moral Non-Psychology of Citizenship**

Psychology, including moral psychology, is about unseen and, at least at present, unseeable thoughts, events and processes which exist, if they exist, inside individuals' brains. It is inevitable, therefore, that the existence, nature and value of these objects are subject to much disagreement. And yet, contemporary political and moral philosophy makes extensive use of such mental entities and processes in order to justify various normative positions. Kant, to whom much contemporary normative thinking is indebted, tells us in one of philosophy's most cited lines that:

There is no possibility of thinking of anything at all in the world, or even out of it, which can be regarded as good without qualification, except a *good will*.<sup>105</sup>

From this starting point, he proceeds to elevate motive—a mental entity—to the apex of moral thinking. Actions are morally worthy or not to the extent that the motivation for the act is respect for the moral law rather than self-interest or some sensuous desire. But, as Kant himself acknowledges, it is impossible to know with certainty the motive for any particular act. Even the doer may be unaware of the true reasons for his actions, or the act may spring from multiple motives.

It is clearly not the case that all modern liberals or all modern Affirmationists (and the two classes intersect) are Kantians in any strong sense of the term. They are all, however, following in Kant's footsteps to the extent that they rely upon the unseen internal workings of the human mind to provide normative foundations for their political morality. Unfortunately, in addition to the conceptual confusion and disagreement which flourishes in discussions of such concepts as respect, self-respect, dignity, recognition, and autonomy, there is no secure basis for assessing the impact of any government policy on the internal mental states of individuals. If we take self-respect (self-esteem) as an example, there is no agreement as to what the role of public policy is or can be in fostering or hindering the development of this psychological quality. Are the lives of cultural, linguistic and other minorities made worse because their self-respect is harmed by a lack of state recognition for their identities? Or rather is the possibility of their living full and flourishing lives hindered by discrimination and a lack of economic resources? Do we really need to give a positive answer to the first question in order to justify a positive answer to the second? My answer to the questions is obvious from the way I have posed them. The first question admits to no definitive answer; the second does. It is, of course, possible to argue that it is quite probable that certain cultural characteristics will lead to individuals who cleave to them having less material success in the broader society than those who reject them. But does this mean that the state has an obligation of justice to try to remedy this fact? Or as Barry puts it, does this mean that "the choice of solidarity within one's

cultural group should not give rise to any sort of relative disadvantage compared with participation in the mainstream society [?]”.<sup>107</sup> Unless Affirmationists can articulate a clear and convincing argument as to why we should give a positive answer to this question—it is my position argued throughout this chapter that they have not provided such an answer—then there is no reason why the answer should not be negative; the argument for this position is parallel to those given by (most) liberals who argue that the state has no duty of justice to compensate the holders of expensive tastes. Similar points could be made about the other constructs of moral psychology used by Affirmationists to justify their policy stances.

With the exception of autonomy which I will discuss below, one has the feeling that the Affirmationists have determined the outcome they wish to achieve—the elevation of language and culture to the status of rights—and then looked to the concepts of psychology and moral psychology to see if they can be used to further the desired conclusion. There is, of course, nothing unusual or inherently wrong with this approach; most political philosophy, mine included, takes the same tack. And it has the advantage that if we can agree on the conclusions—the political policies we want to follow—the disagreements about the justifications lose pragmatic importance. This desire for agreement about (just) political policies, constitutional and other, in the face of moral and cultural diversity is the motivating (that word again) force behind political liberalism. And here I will make clear the position which I will defend in Chapters 6 and 7: substantive political agreement about democracy, individual rights and liberties is an end in itself; it does require an “overlapping consensus”, but that consensus does not require a deeper moral basis in order to be moral itself. Similarly, the concepts of respect (beyond that which I defended above), self-respect, dignity and recognition are not required to justify liberal rights and freedoms. Given their controversial nature and their inherent “hiddenness”, introducing the various conceptions of these concepts into the political

debate as justificatory arguments is much like introducing a religious or other metaphysical belief; arguments based upon them preach to the converted and don't appeal to the widely shared beliefs and concepts of our political culture. This does not preclude their legitimate use in public debate about state policies. Indeed, as I will argue in Chapter 6, religious and other metaphysical beliefs should not be barred from the debate either. What it does suggest, however, is that neither these concepts, nor the state policies which seem to flow from should be permitted any special weight. The concepts are simply too contestable, lend themselves to too many different conceptions if you will, to support rights understood as trumps. No Affirmationist (or other) argument for the importance of respect, self-respect, dignity or recognition is sufficiently strong to attract any sort of overlapping consensus about the policy implications. Indeed, the wide disagreement among Affirmationists themselves, both about justification and about policy, confirms this point.

There, notwithstanding the claims of some, simply is no overlapping consensus about Affirmationist moral psychology or about the status of linguistic and cultural rights; there *is* such a consensus about the need for and desirability of democracy, basic liberal rights and freedoms (although the nature and requirements of democracy, the extent of such rights and freedoms, and the appropriate policies needed to implement them is subject to debate).<sup>108</sup> The relevant issue for a chapter devoted to moral psychology is whether or not these rights and liberties need to be grounded in some conception of autonomy. As I indicated above, I think we need to attribute ownership of values and preferences to individuals if we are to get any debate about democracy and liberty off the ground. Hence, we need to conceive of individuals as having some capacity for autonomous choice. If an individual were under the total control of someone or something else, in the manner of a robot, there would be no reason to attribute ownership of the individual's expressed views any weight whatsoever. Rawls, as we saw, puts forward what he presumably regards as a minimalist view of the

capacity for autonomy that must be attributed to the individual. I myself would argue that less is possible. In reality, we accept an individual's expressed preferences as his or her own unless there is some overriding empirical reason to doubt the fact. This, I think, is sufficient.

Do the rights and freedoms which are widely accepted require the value of (internal) autonomy as their base in the way that Kymlicka, Mill and others argue? My answer is no, and the no must stand here with very little in the way of detailed justification. I offer, however, the following points: First, there simply is, in the world today, widespread, if not general, acceptance of the principle at least of basic liberal rights and freedoms. The agreement is evidence by the need for even repressive or illiberal states to cloak their actions in the language of at least democracy, if not always in terms of individual rights. This is clearly the case in Western Europe and North America and is increasingly so in much of the rest of the world.

There also exist various other religious and philosophical justifications for the political rights and freedoms valued by liberal societies. Religious views which preach absolute obedience to God often also argue for the freedom of the individual. Many, but not all, take the view that the individual must freely accept religious truth if the acceptance is to have any value. There are various natural rights' justifications for individual liberty. The rights and liberties enunciated in the American Bill of Rights flow from this tradition. Contemporary libertarian thinkers such as Robert Nozick also start from this foundation. Various liberal pluralists such as Berlin defend liberal positions without attributing overriding value to autonomy. Shklar argues for a "liberalism of fear" which views liberalism as the result of an unfree history in which intolerance combined with state power led to unspeakable cruelty and horror.<sup>109</sup> Even non-liberal thinkers such as Alasdair MacIntyre produce arguments for a tolerant neutral state which does not infringe basic rights and liberties.<sup>110</sup> And Mill himself offered various purely utilitarian arguments in favour of individual rights and liberties. The

existence of such a variety of justifications for basic rights and freedoms might seem to support the overlapping consensus view that such rights are, in fact, justified by a convergence of various moral positions. It is equally plausible, and in my view more likely, that the reason there is such a variety of justifications for rights is because there is, as the result of contingent historical factors, a consensus about rights. The various comprehensive views developed their different justifications for rights in response to the developing societal consensus regarding their self-evident worth.<sup>111</sup>

In summary, the best moral psychology of liberal citizenship is no psychology at all. The introduction of the various constructs of moral psychology as foundational to political argument is not necessary and counter-productive. They are simply too controversial and subject to too many different interpretations to serve in a liberal state as foundations for rights and liberties which do not enjoy broad philosophical and popular support.

#### Notes

1. John Rawls, A Theory of Justice, revised ed., (Cambridge: The Belknap Press of Harvard University Press, 1999), 421.

2. Ibid., 425.

3. Robin S. Dillon, "Introduction," in Dignity, Character and Self-Respect, ed. Robin S. Dillon (New York, London: Routledge, 1995), 18.

4. Charles Taylor, "The Politics of Recognition", 41.

5. Ibid., 42-43.

6. John E. Atwell, "Kant's Notion of Respect For Persons," in Respect For Persons, Tulane Studies in Philosophy, Vol. XXXI, ed. O. H. Green (New Orleans: Tulane University, 1982), 17, notes that it is "arguable that [the concept of] respect for persons has no real content". He notes that in practical ethical debates it is often used by people on both sides of such issues as capital punishment and abortion. It can also be used to argue both sides of the benign neglect affirmation debate about language and culture.

7. Stephen L. Darwall, "Two Kinds of Respect," in Dignity Character and Self-Respect, ed. Robin S. Dillon, 181-197.

8. Ibid., 183.
9. Ibid., 184.
10. Ibid., 183.
11. Ibid., 183.
12. Charles Taylor. "The Politics of Recognition," 66.
13. Ibid., 66-67.
14. Adeno Addis, "On Human Diversity and the Limits of Toleration," in Ethnicity and Group Rights, 121.
15. Thomas A. Spragens Jr., Civic Liberalism (Lanham, Boulder, New York, Oxford: Rowman & Littlefield Publishers, Inc., 1999), 90.
16. Ibid., 91-93.
17. Ibid., 92.
18. Ibid., 92.
19. Atwell, "Kant's Notion of Respect For Persons," 17. The literature on the Kantian roots of respect is large. See, in addition to the articles in Respect For Persons, Thomas E. Hill Jr., Dignity and Practical Reason in Kant's Moral Theory (Ithaca and London: Cornell University Press, 1992).
20. Hill, Jr., Dignity and Practical Reason in Kant's Moral Theory, 61-62.
21. Ibid., 61.
22. Rawls, A Theory of Justice (revised edition), 123-124.
23. Ibid., 442.
24. Ibid., 442.
25. Ibid., 442.
26. Ibid., 386.
27. Ibid., 54.
28. Ibid., 54.
29. Ibid., 156. See also Rawls, Political Liberalism, 203: "...in securing the equal basic rights and liberties, fair equality of opportunity, and the like, political society guarantees the essentials of a

persons' public recognition as free and equal citizens. In securing these things political society secures their fundamental needs.

30. Rawls, A Theory of Justice (revised edition) 388.

31. Ibid., 477. On 478 Rawls concludes: "In a well-ordered society...self-respect is secured by the public affirmation of the status of equal citizenship for all. See also Rawls, Political Liberalism, 319-320: "...only the two principles of justice guarantee the basic liberties, [therefore] they are more effective than the other alternatives in encouraging and supporting the self-respect of citizens as equal persons...the basic liberties enable the two principles of justice to meet more effectively than the other alternatives the requirements for self-respect."

32. Rosenblum, Membership and Morals: The Personal Uses of Pluralism in America, 61.

33. Summarized in Lawrence C. Becker and Charlotte B. Becker, eds. Encyclopaedia of Ethics (New York: Garland Publishing, Inc., 1992), s.v. "Self-Respect," by Thomas E. Hill, Jr., 1137.

34. David Sachs, "How to Distinguish Self-Respect from Self-Esteem," Philosophy & Public Affairs 10 No. 4, 346.

35. Elizabeth Telfer, "Self-Respect," in Dignity Character and Self-Respect, 107-116.

36. Ibid., 109.

37. Ibid., 107.

38. Hill, Jr., "Self-Respect", 1136-1137.

39. Ibid., 1137.

40. Robert E. Lane, "Government and Self-Esteem," Political Theory Vol. 10 No. 1 (February 1982): 7. Lane cites various American sociological studies to support this position.

41. Ibid., 26.

42. Ibid., 26.

43. Ibid., 26.

44. Rosenblum, Membership and Morals: The Personal Uses of Pluralism in America, 177.

45. Ibid., 171.

46. Ibid., 176.

47. Ibid., 176.

48. Ibid., 177.

49.Ibid., 177.

50.Ibid., 181.

51.Lane's review of the evidence found little reason to think that political actions or participation are important sources of self-esteem: Americans are not likely to draw much self-esteem from... political sources." Furthermore, while he found some evidence that minority status in an otherwise homogeneous neighbourhood lowered a person's self-esteem, this was largely due to the individual feeling that he was "wrong" in certain aspects of his culture or religion. Presumably, the best the state can do in these circumstances is to avoid being a part of the problem by recognizing or promoting any one culture, particularly the culture of the majority. Lane, "Government and Self-Esteem", 8 and 17.

52.Daniel W. Weinstock, "The Political Theory of Strong Evaluation," in Philosophy in an Age of Pluralism, ed.. James Tully, 181.

53.Ibid., 181.

54.Ibid., 182.

55.Ibid., 182.

56.Ibid., 183.

57.Michael J. Meyer, "Dignity," in the Encyclopaedia of Ethics, 262.

58.Ibid., 262.

59.Ibid., 262.

60.Ibid., 262.

61.Michael J. Meyer, "Kant's Conception of Dignity and Modern Political Thought," History of European Ideas, Vol. 8 No. 3 (1987): 319.

62.See Taylor, "The Politics of Recognition," 38-58 for his exiguous of the historical development of the concept.

63.J.S. Mill, Utilitarianism, in J.S. Mill, Utilitarianism, On Liberty and Considerations on Representative Government, ed. H.B. Acton (London: J.M. Dent & Sons Ltd., Everyman's Library, 1972), 9-10.

64.Hill, Jr., Dignity and Practical Reason in Kant's Moral Theory, 47.

65.Meyer, "Kant's Conception of Dignity and Modern Political Thought" 318.

66.Ibid., 320. Meyer provides various citations to support this view.

67.Ibid., 322.

68. Ibid., 323.

69. Ibid., 327.

70. Ibid., 327. Meyer is citing from The Metaphysical Principles of Virtue.

71. Ibid., 328.

72. Ibid., 329.

73. Ibid., 329.

74. One could perhaps avoid this conclusion by relating dignity not to any particular language or culture but to a universal capacity for these things. The universal existence of a capacity does not in and of itself, however, automatically entail that it should be recognized or cultivated. It is presumably the likely results of recognizing or cultivating it in a particular way which determine whether or not it is desirable to do so.

75. Taylor, "The Politics of Recognition", 25.

76. Gerald Dworkin, The Theory and Practice of Autonomy (Cambridge: Cambridge University Press, 1988), 6.

77. Ibid., 6.

78. Ibid., 34.

79. Ibid., 34-35.

80. Hill, Jr., Dignity and Practical Reason in Kant's Moral Theory, 85.

81. Hill canvases objections to Kant's position in Ibid., 91-96.

82. Rawls, Political Liberalism, 29.

83. Ibid., 30.

84. Ibid., 30.

85. Ibid., 32.

86. Ibid., 33.

87. Ibid., 33.

88. Ibid., 34.

89. Immanuel Kant, Groundwork for the Metaphysics of Morals, trans. James W. Ellington (Indianapolis: Hackett Publishing Company, Inc.: 1981), 41 (436).

90. Henry E. Allison, Kant's Theory of Freedom (Cambridge: Cambridge University Press, 1990), 105. See also Roger J. Sullivan, Immanuel Kant's Moral Theory (Cambridge: Cambridge University Press, 1989), 46-47.

91. Mill, On Liberty, in Utilitarianism, On Liberty and Considerations on Representative Government, 126-127.

92. Meira Levinson, The Demands of Liberal Education (Oxford: Oxford University Press, 1999), 15.

93. John Gray, Berlin (London: Fontana Press, 1995), 32-33.

94. The literature on the merits, or lack thereof, of political liberalism is large and growing. In what follows, I have relied on Levinson, The Demands of Liberal Education, Chapter 1. Among other discussions, I found the following useful: Spragens, Jr., Civic Liberalism, Chapter 5; Stephen Macedo, Diversity and Distrust (Cambridge and London: Harvard University Press, 2000), 236-240 and "Liberal Civic Education and Religious Fundamentalism: The Case of God v. John Rawls?", Ethics 105 (April 1995): 468-496; Attracta Ingram, "Rawlsians, Pluralists and Cosmopolitans," in Philosophy and Pluralism, 147-161; Susan Moller Okin "Political Liberalism, Justice and Gender," Ethics 105 (October 1994): 23-43; Leif Wenar, "Political Liberalism: An Internal Critique," Ethics 106 (October 1995): 32-62; Samuel Scheffler, "The Appeal of Political Liberalism," Ethics 105 (October 1994): 4-22; and Eamonn Callan, "Political Liberalism and Political Education," The Review of Politics Vol. 58 No. 1 (Winter 1996): 5-33 and Creating Citizens (Oxford: Clarendon Press, 1997), Chapters 2 and 3.

95. Rawls, Political Liberalism 54-58.

96. *Ibid.*, 60.

97. *Ibid.*, 12.

98. *Ibid.*, 13.

99. Levinson, The Demands of Liberal Education, 17.

100. *Ibid.*, 17. Callan, in particular, has strongly argued this point. See Callan, Creating Citizens, Chapter 2. This requirement pertains, it seems to me, more to autonomy as a postulate of moral psychology than to autonomy as a value. Citizens must have the capacity, but they don't need to value it.

101. Kymlicka, Multicultural Citizenship, 82, cited in Levinson, The Demands of Liberal Education, 19.

102. Levinson, The Demands of Liberal Education, 19 citing Rawls, Political Liberalism, 300.

103. Levinson, The Demands of Liberal Education, 20.

104. *Ibid.*, 20-21.

105. Ibid., 22.

106. Kant, Grounding for the Metaphysics of Morals, 7 (393).

107. Barry, Culture & Equality, 95.

108. Barry addresses the claim made by Kymlicka that there is an emerging consensus on liberal multiculturalism as follows: "Will Kymlicka has recently suggested that there is a 'possible convergence in the recent literature...on ideas of liberal multiculturalism'. This view...has, he says, 'arguably become the dominant position in the literature today, and most debates are about how to develop and refine the liberal culturalist position, rather than whether to accept it in the first place.' What Kymlicka says is true, but misleading.

What is true is that those who actually write about the subject do so for the most part from some sort of multiculturalist position. But the point is that those who do not take this position tend not to write about it at all but work instead on other questions that they regard as more worthwhile. Indeed, I have found that there is something approaching a consensus among those who do not write about it that the literature of multiculturalism is not worth wasting powder and shot on." Barry, Culture & Equality, 6.

With the obvious exception of Barry's final cited sentence, I agree with his argument. It is the case that there is a consensus about the value, if not the exact nature and scope, of basic liberal rights. All liberals, including Affirmationists, accept these. Even if they do not write explicitly about them, they form part of their basic political framework. One can be sure that Kymlicka and Taylor, for example, support basic liberal rights; one cannot be sure that Rawls and Dworkin support "liberal multiculturalism". If one moves out of the rarified world of academia and works written primarily by and for academics, the picture is even clearer. Most citizens of liberal democracies pay public lip service at least to basic liberal rights; this is not true for the policies advocated by the Affirmationists.

109. Judith N. Shklar, "The Liberalism of Fear," in Liberalism and the Moral Life, ed. Nancy L. Rosenblum (Cambridge and London: Harvard University Press, 1989), 21-38.

110. Alasdair MacIntyre, "Toleration and the Goods of Conflict," in The Politics of Toleration in Modern Life, ed. Susan Mendus (Durham: Duke University Press, 200), 133-155. See especially 142-144.

111. This view is particularly plausible for many religious justifications. Religious views supporting liberty of conscience, free speech etc. were not so common as they are today when the various religious groups were in a position to enforce their views on dissenters.

## **5.0 Culture, Religion and Theories of the Good**

Chapter 3 argued that the Affirmationist critique of traditional views of liberal citizenship takes two different justificatory stances: the view that cultural affirmation is required because substantive injustice exists; and the position that there is something uniquely important about language and culture which would require culturally affirming state policies even in the absence of injustice. This division would beg the question if culture were important in the way the latter group of Affirmationists argue. If their arguments were found compelling, a failure by the state to promote and affirm culture would, in and of itself, constitute a substantive injustice even in the absence of conditions--lack of democracy and individual rights--which constitute injustice in the traditional view. Affirmationists of the second type put forward concepts of moral psychology as the justificatory grounds for their policy positions; a failure to affirm culture indicates a lack of respect, damages self-respect or indicates an insufficient valuation of individual autonomy. In Chapter 4, I contested the force of these claims. I argued that while such notions may be important they simply will not carry the weight which the Affirmationists wish to put on them. In other words, they do not support the claim that a failure by the state to affirm and promote culture(s) is an inherent violation of the claims of justice.

This chapter critiques the Affirmationist position from a different direction. I argue first that one cannot clearly distinguish between culture as generally interpreted by the Affirmationists and theories of the good (comprehensive views) as formulated by liberal theorists. Second, on the basis of an admittedly eclectic and unscientific overview of the actual demands for cultural affirmation, I demonstrate that religious and moral positions are a much larger component of culture and play a much greater role in identity politics than Affirmationists are generally wont to admit. Given that religion is generally considered to be a paradigm case of a comprehensive view or theory of the good,

I investigate the problems which arise when a state attempts to practice benign neglect towards religion. The litigious nature of American society combined with a constitutional separation of church and state has meant that the relevant issues have been extensively debated in the public forum of the courts in the United States. I use this experience to argue that a policy of benign neglect, although not without problems, is possible with regard to religion and hence with regard to much of what is contained by the term culture. I also look, briefly, at the Canadian attempt to address the same issues through a policy of selective affirmation. I conclude with a discussion of the vexatious question of language.

### **5.1 'Culture' and Comprehensive Views**

The term 'culture' derives from the Latin 'cultura' meaning to cultivate the soil.<sup>1</sup> Cultivation of the mind was seen as comparable to cultivation of the earth; "hence, the early meanings of 'culture',...centred on a process, the culture of the mind, rather than on an achieved state".<sup>2</sup> Modern interpretations developed between the late eighteenth and the late nineteenth centuries:

First, "culture" came to mean "a general state or habit of mind" with close relations to the idea of human perfection. Second, it came to mean "a general state of intellectual and moral development in a society as a whole". Third, it came to mean "the general body of the arts and intellectual work". Fourth, it came to mean "the whole way of life, material, intellectual and spiritual, of a given society."<sup>3</sup>

Different cultures are the different ways in which individuals "find meaning and value in their lives".<sup>4</sup>

In a more recent formulation, Waldron restates this idea of culture as follow:

...a *culture* is (something like) an enduring array of social practices, subsisting as a way of life for a whole people...it represents the heritage of a particular people's attempts to address and come to terms with the problems of social life—problems that are serious and have to be addressed...when a person talks about his identity...he is relating himself not just to a set of dances, costumes, recipes, and incantations, but to a distinct set of practices in which his people...have historically addressed and settled upon solutions to the serious problems of human life in society.<sup>5</sup>

The theorists discussed in Chapter 3, with the exception of Kymlicka whose definition of a "societal

culture” was cited above, are reticent about the precise meaning they assign to ‘culture’. The indexes of Tamir’s Liberal Nationalism and Taylor’s Sources of the Self, for example, have no entries for culture as such, nor am I able to find a clear statement in their other works. It is assumed that the reader knows what they are talking about. I believe that Waldron’s definition is sufficiently broad to encompass their meanings of culture. Culture is conceptualized as the set of practices and beliefs on which people use to address the serious problems of human existence.

In Chapter 2.0, I cited several interpretations of comprehensive views or theories of the good. Bonin defined a theory of the good as “a way to articulate the values which give meaning to our lives” while Waldron referred to an individual’s conception of the good life as “a plan or a strategy for living that an individual uses as a basis for making and reflecting on her morally important decisions.” Rawls called a view comprehensive “when it includes conceptions of what is of value in human life”. On these definitions, a comprehensive view is something which is internal to an individual. It is the individual who has a view as to what is of value in life. Waldron’s definition of culture, by contrast, locates culture as existing outside the individual; it is located in a society as a whole. (I realize the difficulty in applying a spatial metaphor to the issue, but I think it adds more clarity than confusion.) Furthermore, a comprehensive view is a sort of thing, a mental thing, but a thing nevertheless while culture seems to be in some way more of an activity than a thing; it is “an enduring array of social practices”.

But surely the differences between the two concepts are not all that great. The values which make up an individual’s comprehensive view must often express themselves in terms of activities. When values are shared by many individuals in a society, the practices the values engender become societal practices, cultural practices if you will. In any state there will be a variety of such “values” or cultural practices, some widely shared some not so widely shared. It is, of course, possible that an

individual have a value or values which do not cash out in terms of practice, but this would not appear to be the norm; nor would such values be relevant to a political discussion; they would be simply the internal thoughts of an individual and of no political relevance.

It is, of course, possible to imagine cultural practices and values which do not seem to fit into the concept of a theory of the good and moral values which do not work themselves out in terms of cultural practices. The activities encompassed by Waldron's "dances, costumes, recipes, and incantations" are examples of the first category. By referring to culture as "not just" these types of things, Waldron downplays their importance. Nonetheless, such things do make up an important part of cultural practices and are not normally conceived to be part of a theory of the good. (Sometimes they are. Vegetarianism, for example, is both a cultural practice and a moral value.) On the other hand, an intensely held religious belief may not require external or cultural practice. But there are many cultural practices which are expressions of individuals' comprehensive views. Questions of marriage, family and gender roles are cultural practices which form part of many people's comprehensive views, and one can think of other examples.

Cultures and theories of the good are, therefore, not exactly one and the same concept. Hence, Brighouse's automatic extension of state neutrality to questions of culture is not justified without further elaboration. It is probably best to regard the two concepts as concepts of different, but overlapping, sets. Some things such as recipes and dress, for example are often (but not always) just cultural practices with no moral import. Other things such as certain moral values may have few cultural implications. The degree of overlap will vary depending on the culture and on the comprehensive view. Certain comprehensive views, some religiously based comprehensive views for example, provide answers to many if not most cultural questions; they dictate the answers to questions about diet and dress as well as those relating to marriage, family and gender roles. Other

comprehensive views may require fewer cultural practices to work themselves out.

## **5.2. The Religious Component of 'Culture'**

Religion is, as I have noted, a paradigm of a comprehensive view or theory of the good. The degree to which cultural practices are the reflection of religious beliefs is, therefore, one way of measuring the degree of overlap between culture and comprehensive views. It is my position that the empirical evidence supports the view that there is a very large overlap indeed between the sets encompassed by the two concepts.

“Many thoughtful people” argues Martin E. Marty, “assumed that religious faith and practice would disappear, if indeed they had not already permanently disappeared from sectors of the modern scene”.<sup>6</sup> One could, I think, substitute for “Many thoughtful people” the phrase “Most contemporary liberals”.<sup>7</sup> Affirmationist theory discusses culture and cultural identity primarily in terms of language, common history, and a general way of looking at the world. As Marty notes, however, “One can observe the struggling, the wrestling about self-identity from several vantages”, but “The closer one gets to the people, the more vivid and tangible is the religious component”.<sup>8</sup> If issues of culture and identity are as fundamental as the Affirmationists argue, it is a falsification of empirical reality to deny that religion is often the dominant feature of culture as experienced and lived by individuals. As Raymond Grew argues:

Establishing social identities entails the definition of boundaries and can build in distinctions of status, class, race, and geography. In all of this, religion is central, not only because systems of belief and communal rites are at the core of social identity but because religion's transcendent concerns allow unmatched flexibility in the weight given to all social distinctions...religious movements can appeal to differences of class and ethnicity or cut across them, even shifting emphasis and in effect changing the demarcations themselves in midcourse.<sup>9</sup>

The importance of religion to the identities that individuals value and want the state to recognize is evident in the case of minority immigrant groups. Even a superficial look at the concrete

demands for cultural recognition made by such groups discloses its importance: permission to display religious symbols in the public schools; the right to display religious symbols as part of or instead of standard police and military uniforms; demands that minority students be allowed time off to celebrate their religious holidays that do not coincide with public holidays; demands for state supported religious schools; etc. These are not demands for the recognition of 'culture' in general; they are unambiguously demands for the recognition of the religious component of a given culture, the component often seen as most important and most susceptible to preservation in a new society. Lois Sweet quotes Kalid, a Pakistani immigrant to Canada, who explains why he sends his children to a private (and relatively expensive) Islamic school:

**"I left basically everything behind...Every single thing. I hardly ever speak with my kids in my own language [Punjabi]...Always English. But religion is a very precious thing to us. We want to preserve our religion. Culture, I don't care. I know you can only perpetuate it for a couple of generations at most...But religion is a very, very universal thing. It is a very important thing...We Muslim parents have to raise our kids in the Islamic way until they come of age...On the day of Judgement, we believe we'll be asked about these things. 'What did you do? The God almighty gave you these children, what did you do with them? How have you raised them?'"<sup>10</sup>**

It is true, of course, that not all immigrant groups see the world in the same way; and not all members of any one group think alike:

**...ethnic minority individuals, including those for whom an ethnic identity is of special importance, have several strands to their ethnic identity, but they also have numerous other identities based on occupation, neighbourhood, education, gender, hobbies and so on.<sup>11</sup>**

Nevertheless, religion is often an important component. A study of Caribbean and South Asian immigrants in Great Britain found that:

**...some first generation Caribbeans no less than most Asians saw their religion not just as a set of beliefs or as a moral framework but as an important part of their cultural heritage and identity.<sup>12</sup>**

But whereas "for the first generation of Asians their religion was intrinsically connected with their

status as an ethnic group”, most Caribbean Christians, “even for those who saw their Christianity as part of their family tradition and culture” tended not to feel that religion was a significant “part of their sense of ethnic difference”.<sup>13</sup> For the second generation, the difference in the importance placed on the religious component of ethnic identity widens. Second generation Asians, even those young Asians who do not practice their religion:

...nevertheless recognize that religion as part of their distinctive heritage and ethnic identity and state that they wish to pass it on to their children at least in that form...they believe that not to teach their children the ancestral religion is to give them a reduced ethnic heritage...<sup>14</sup>

Second generation Caribbean immigrants, on the other hand, said:

...nothing to suggest that Christianity, including the distinctive traditions and sects of Caribbean Christianity, was a feature of Caribbean ethnicity.<sup>15</sup>

The conclusion I draw from this empirical evidence about immigrant minorities is not that religion is always an important part of an individual’s identity, nor that demands for state recognition by such groups necessarily involve religion, but rather that it often is and they regularly do.

Not only immigrant minorities perceive religion as central to their identities. It is also important for the cultural identity that many Aboriginals seek to protect. Kymlicka cites the case of the Pueblo American Indian tribe who “have, in effect, established a theocratic government that discriminates against those members who do not share the tribal religion”.<sup>16</sup> Menno Boldt argues that:

Cultures embody a set of premises about the purpose, value, and meaning of life. For Indians, these premises are derived from unwritten covenants the Creator communicated to their ancestors. The covenants comprehend a number of fundamental philosophies and principles that gave coherence and unity to *Indian* values, beliefs, social systems, customs and traditions.<sup>17</sup>

And while Indian culture must, if it wants to survive, adapt to the modern world:

...the process of cultural adaption and development must be guided by the philosophies and principles inherent in their covenants; that is, their cultures and their identities

must be revitalized within a framework of traditional philosophies and principles.<sup>18</sup>

Spiritual and religious values are, on this view, central to, Aboriginal culture.

Religion is also often central to the cultural identity of individuals who belong to cultural majorities. The sociologist Samuel P. Huntington argues that, at the global level:

...the major civilizations in human history have been closely identified with the world's great religions; and people who share ethnicity and language but differ in religion may slaughter each other as happened in Lebanon, the former Yugoslavia and the Subcontinent.<sup>19</sup>

There are, he argues, two central elements of any culture—language and religion.<sup>20</sup> It is not necessary to accept Huntington's hyperbolic claim of an inevitable "clash" of religiously based civilizations or cultures to accept the point that religion has historically been, and remains, at the centre of what matters most to individuals who value their culture.

Another sociologist, Mark Juergensmeyer, argues that religiously based nationalism is a live and flourishing rival to secular linguistically based nationalisms. "In many parts of the world," he claims, "religious and ethnic identities are intertwined...the crucial symbols and ideas of the regions's cultural heritages are most often the religious ones".<sup>21</sup> Both religious and secular nationalism (i.e., nationalism and national identity based on what the Affirmationists take to be culture) are "ideologies of order":

Both religious and secular nationalistic frameworks of thought conceive of the world in coherent, manageable ways; they both suggest that there are levels of meaning beneath the day-to-day world that give coherence to things unseen; and they both provide the authority that gives the social and political order its reason for being. In doing so they define for the individual the right way of being in the world and relate persons to the social whole.<sup>22</sup>

This similarity of function makes religious identity and secular concepts of identity rivals:

Either can claim to be the guarantor of orderliness within a society; either can claim to be the ultimate authority for social order.<sup>23</sup>

Like the proponents of secular linguistically based views of cultural identity:

...religious nationalists want the symbols and culture of their own religious communities to be glorified as part of the heritage of the nation.<sup>24</sup>

Juergensmeyer's study focuses on religiously based identity politics in parts of the world not hitherto known for their attachment to liberal political principles. But it is not necessary to look outside of North America for evidence that religion is central to the way many individuals—individuals normally thought of as part of the cultural majority—view their identities. In the United States, Christian fundamentalists explicitly couch their position in cultural terms and argue that they are, in fact, oppressed on account of their cultural identities. Stephen Carter argues that:

...religion matters to people, and matters a lot...strong majorities of citizens tell pollsters that their religious beliefs are of great importance to them in their daily lives.<sup>25</sup>

Stolzenberg argues that requiring the children of fundamentalists to study “diverse viewpoints in a tolerant and objective mode threatens” as she puts it, “the survival of their culture”.<sup>26</sup> Nor is Canada different in this respect. The ongoing debate in Quebec about the role of religion in public education indicates that many Quebecois, contrary to Kymlicka, continue to regard the Catholic religion as central to their cultural identity.<sup>27</sup> Ontario has recently been attacked for the privileging of Catholic education and many provinces have seen controversies about the role of religion in public education; nor has the idea of (Christian) prayer in government settings disappeared.<sup>28</sup>

The empirical evidence supports the conclusion that Affirmationists who argue for the state recognition, promotion and support of culture, but not for religion, are either misreading or ignoring sociological reality, or they are arguing from a conception of identity which would not be supported by those individuals supposedly having it. This, if Walzer's methodological point cited in Chapter 1 about the need for philosophy to be sociologically informed is taken seriously, Affirmationist theory is flawed. Joseph Carens, a (qualified) advocate of Walzer's contextual approach to political philosophy, summarizes the point as follows:

One might object that religion should not be regarded as a cultural variable. It is certainly not only a cultural variable. From the perspective of believers it is inappropriate to treat religion (only or primarily) as a cultural variable, and even from a secular sociological perspective, it is clear that the great world religions cannot be adequately studied through lens of particular national cultures ...Nevertheless, I do not think that any discussion of the multiculturalism associated with national and ethnic differences can leave questions about religion entirely aside. Religion and ethnicity are intertwined in many complex ways...many of the most hotly contested issues in contemporary debates over multiculturalism are connected to values and practices that are associated with the religions traditions of immigrant groups and national minorities.<sup>29</sup>

It is possible and logically coherent to accept that religion is often an integral part of culture and that state recognition of culture often means state recognition of religion. (Carens, in fact, does just this.) This does, however, involve a significant innovation of liberal doctrine, although not necessarily of liberal practice. Alternatively, if one accepts Waldron's definition of culture as "an array of social practices" one could choose to affirm certain practices but not others.<sup>30</sup> This would imply the rejection of any general "right to culture" or any right to have one's own culture recognized in its entirety by the state. Cultural claims qua cultural claims would then be viewed not as claims to a right but as individual interests and preferences.

### **5.3. Liberalism and Religion**

In Chapter 1, I noted that Affirmationists reject the idea of a parallel between culture and religion. Most liberals, including Affirmationists like Taylor and Kymlicka (Phillips and Young, but not Tamir and Raz), support the idea of state neutrality towards religion—i.e., the state should guarantee the right to freedom of religion, but it should not take any position on questions of religious truth nor explicitly recognize and support any particular religious view. These same Affirmationists, however, argue that the state has a positive duty to reject the idea of neutrality towards culture as either unjust, impossible, or both. Two different categories of argument therefore underlie the Affirmationist position that culture and religion should not be treated in the same way. The argument

that such similarity of treatment would be unjust relies on the postulates of moral psychology which I criticized in Chapter 4. In the two preceding sections of this chapter, I attempted to further undermine the justice argument by demonstrating that culture and comprehensive view are overlapping concepts. The argument was reinforced by the empirical case that most, probably the majority, of real world demands for the state recognition of culture are religious in nature. To the extent that the claims made in these two sections were valid, and to the extent that traditional liberal arguments for religious neutrality are valid, the Affirmationist position that religion and culture are not similar and therefore to treat them in a similar manner would be unjust, is refuted.

In this section, I wish to address the impossibility argument—the claim that true neutrality is impossible. Once again, I have no decisive argument to offer; rather I will again use the religion/culture heuristic and review the United States experience in attempting to implement a policy of state neutrality in the face of a religiously diverse society. The conclusion I wish to draw is that to the extent workable solutions have been found for religious questions, similar solutions are available for culture in the areas of conceptual overlap. It will be evident from my discussion that there are problems, problems which have grown as American society came to include significant numbers of adherents to faiths other than various Protestant Christian denominations. Nevertheless, I hold that neutrality does work in the sense that conflicts among various religions groups as well as non-believers have been, and continue to be, resolved in a way that maintains the substance of neutrality; the state guarantees freedom of religion but does not officially recognize or support any particular view. I will contrast this approach of official neutrality with a brief comparison to Canada which, while not constitutionally separating church and state, has in recent years followed a judicial course which suggests that state recognition or establishment of religion is incompatible with the full religious liberty expected in a liberal democracy.

It is often argued that liberalism, as a political philosophy, originated in the pragmatic belief that religion should be removed from the state's political agenda in order to promote civil peace.

Stephen Holmes gives a clear statement of this view:

No issue is more frequently classified as “worth of avoiding” than religion. Sectarianism is rightly feared as a divisive force, a potential threat to communal cooperation. Religious disputes cannot always be resolved politically, or even rationally. On this premise, some multi denominational communities with liberal aspirations have decided to draw a “line” between public and private—to consign controversial religious attachments to the nonpolitical sphere, beyond the jurisdiction of majorities and officials.<sup>31</sup>

In contemporary theory, this view is reinforced by the position that the liberal state has no right to judge the moral value of the views and beliefs affirmed by its citizens. What this means in practice is, however, more varied.

Religiously neutral states are not the norm. Many liberal democratic European states, for example, are committed to almost total freedom of religious belief. They generally live up to that commitment in practice, but they have state established, recognized and supported churches which are the legacies of particular historical circumstances in which the national church was often an important part of national identity. The establishment means that some religious beliefs are favoured over others in various ways: taxpayer support; protection through (little used) blasphemy laws; and participation in state symbols and rituals. Many feel that such arrangements, while in conflict with the liberal ideal, are not serious; they “are scarcely on a scale to lead anyone to feel seriously discriminated against”.<sup>32</sup> Those who oppose such arrangements do so from two different perspectives. One point of view argues that such surviving establishments are anachronisms in a modern liberal democratic society and should be, to the extent politically feasible, reduced or abolished; the state should adopt a policy of strict neutrality—benign neglect—towards all religious groups (including those whose religion is no religion at all). Those arguing from the second perspective, and this often includes members of

minority religions, argue that support, particularly financial support, protection from blasphemy, and control over publically funded education, should be extended to all religious groups and not limited to the historically dominant group; on this view, all religions should be affirmed. (Of course, many traditionalists like things just as they are, seeing the first group as Godless promoters of state imposed secularism and the second as upstart minorities who should “when in Rome...”.) The French Republican model, on the other hand, banishes religion, to the extent possible, from the public sphere; the state is secular and favours neither religious belief in general nor any one religious belief in particular; “la laïcité” is the official ideology of the state.<sup>33</sup> Theoretically, no religion is given preference over another (although in French practice, at least in educational matters, Christianity in general, and Roman Catholicism in particular, are privileged). The republican model is often criticized as either implicitly supportive of the dominant religion or, alternatively, as actively promoting non-belief or secularism.

Canada and the United States exemplify two different approaches to the relationship between religion and the state. The United States Constitution officially separates church and state while providing special protection for religious belief and practice. The Canadian Constitution, while protecting religious freedom, officially recognizes the existence of a supreme being. Certain religious denominations are constitutionally recognized and accorded special legal status. I will review the two approaches in some detail with a view to drawing insights into the implications for the issues of cultural affirmation and public reason.

### **5.3.1 Separation of Church and State – American Style**

The United States Constitution, unlike the Canadian Charter of Rights and Freedoms makes no mention of “the supremacy of God”.<sup>34</sup> It forbids any religious qualification for federal public office and permits “affirmation” in place of religious oaths.<sup>35</sup> The central provision governing subsequent

constitutional practice is set out in the first amendment, which declares Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” The Constitution does not specifically “divorce religion and politics”; congress is not prohibited “from making laws affecting religion”; and “It says nothing about states”.<sup>36</sup>

In late 18<sup>th</sup> century America, the prevailing norm was selective government support for religion.<sup>37</sup> No one religious group was predominant; New England was characterized by various forms of Puritanism while the Anglican Church was important in the South.<sup>38</sup> Religion “was pervasive in the culture”.<sup>39</sup> This pervasiveness was reflected in legal practices:

...constitutional law expressed the broader political culture, which included such other formal features as blasphemy prosecutions, Sabbatarian rules, official thanksgiving and fast days, and a large miscellany of localistic informal practices that gave religion a recognizable public role.<sup>40</sup>

No serious thought was given to disestablishing stated supported religion or prohibiting “official religiosity at the state level”.<sup>41</sup>

While there is much disagreement about how the religious clauses of the first amendment should be interpreted and applied, there is general scholarly support for the view “that they originally met with broad support from at least three distinct sources”.<sup>42</sup> The first, voluntarism, finds expression in the free exercise clause. It:

...is the principle that religion is a private choice, a relation solely between God and the individual. It grew from traditions of religious toleration in the middle colonies, especially Quakers in Pennsylvania and Roman Catholics in Maryland...<sup>43</sup>

The second intellectual source, separatism, is expressed in the establishment clause which implies that religion belongs strictly to the non-state private sphere. This view was supported both by those who wished to insulate the state from religious conflict and by religious believers who feared the intrusion of the state into “the garden of God”.<sup>44</sup> The separation principle found its clearest expression in Madison’s “Memorial Against Religious Assessments” in 1785.<sup>45</sup> The third principle, federalism,

“addressed by addressing Congress only, is the principle of state autonomy in religious affairs”.<sup>46</sup> The first amendment blended these three potentially incompatible ideas into a working consensus regarding the relationship between the national government and religion. The consensus may be summarized as follows:

- (1) Congress, and by implication all federal officials, cannot interfere with peaceful exercise of private religion;
- (2) Congress cannot establish a national religion;
- (3) Congress cannot prefer one or more religions over other religions, though states could; and
- (4) Congress must keep hands off state establishments.<sup>47</sup>

The consensus applied to a country which was religiously diverse in that there were a large number of religious denominations, but which was also religiously homogeneous in that the overwhelming majority of (white) citizens were Protestant Christians.

The road from this consensus, circa 1800, to the present and the current debate over cultural recognition is long and winding; I will limit my comments to three facts. First, the last state establishment was abandoned around 1834, although states continued to have the right to favour religion in general and any denomination in particular if they wished to do so.<sup>48</sup> Second, and this was undoubtedly a factor in the triumph of disestablishmentarianism, American society became more religiously diverse. This began with the arrival of large numbers of Irish Catholics in the first half of the 19<sup>th</sup> century and continued, at an uneven rate, up to the present time when American society includes significant numbers of non-Christians.<sup>49</sup> The third important development was the application of the first amendment clauses to the actions of state (and municipal) governments. The 1940 Supreme Court Decision Cantwell v. Connecticut established this principle:

The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as Congress to enact such laws.<sup>50</sup>

The increase in religious diversity of American society changed the sociology which underlay the

original consensus; the application of the religious clauses of the first amendment to the states violated the consensus which left the states free to support and favour the religious preferences of local majorities. Consequently, the principles of nonestablishment and free exercise are now applicable to all levels of government in a society which, while diverse, is still overwhelmingly Christian in orientation. Difficult issues arise, issues which have close parallels to those which would be faced by a government which wished to be neutral—practice benign neglect—towards cultural diversity in a society which while culturally diverse has a cultural majority. If we (temporarily) set aside the question of language, there is little or no practical difference between religious and cultural issues. If they can be satisfactorily resolved for religion through state neutrality—satisfactorily meaning permitting reasonable and principled compromises reached through an on-going societal debate—then the same is at least conceptually possible for culture.

The United States Constitution contains two distinct principles with regard to religion: first, it prohibits governments from interfering with the religious practices of individuals and groups; and second, it forbids any “establishment” of religion. Taken together, the two parts amount to a policy of neutrality, if not a privileging of religion. In the following paragraphs, I outline the major issues raised by the application of the two principles. It is clear that practice gives rise to controversy, often changes, is sometimes unpopular, and may be inconsistent. But this is necessarily the case. The relevant question is whether or not the result meets our (liberal) intuitions regarding toleration and state neutrality and whether or not it is workable. If it does, and if it is, is it feasible to argue that the same framework could function as a guide to state policy toward culture? Furthermore, it is clear, and the Canadian experience will confirm this point, that free exercise and non-establishment are necessarily linked; non-establishment requires that free exercise be liberally interpreted and free exercise is impossible in the face of meaningful establishment.

The right to free exercise:

...is widely understood to forbid government interference with religious belief or peaceful worship. The main questions are whether and how far, the constitution also shelters religiously motivated conduct.<sup>51</sup>

It is generally agreed that the free exercise clause is at least the legal equivalent to a nondiscrimination clause—"that government 'prohibits' the free exercise if its prohibitory action disfavours religious practice as such—is not controversial, but that the norm is more than an antidiscrimination provision is controversial."<sup>52</sup> The issue is whether or not the norm forbids in addition to prohibitory action that is discriminatory, at least some governmental action that, although *nondiscriminatory*, impedes religious practice?"<sup>53</sup> The question is litigated in the form of minorities requesting "exemptions from generally applicable laws, such as compulsory education, flag salutes, military service, and taxation."<sup>54</sup>

Legal scholars take two contrasting positions on the issue of what the free exercise norm includes: those who favour, and believe the constitution supports, religious exemptions and those who don't.<sup>55</sup> The United States Supreme Court has not always been consistent:

Since adoption of the Bill of Rights...[the Supreme Court]...has alternated between no-exemption and exemption standards for religiously motivated conduct.<sup>56</sup>

Those who favour "accommodating" religious practice hold:

...that the free exercise norm not only forbids government to discriminate against religious practice, but also requires government to maximize the space for religious practice by exempting religious practice from an otherwise applicable ban on other regulatory restraint that would interfere substantially with a person's ability to engage in the practice, unless the exemption would seriously compromise an important public issue.<sup>57</sup>

The "standard argument" in favour of accommodating religiously motivated practices is based on the need for minorities to be protected from majorities:

...the argument is that because members of a majority religion are likely to protect their own religious practices when writing laws but to ignore (not necessarily

intentionally) the harm that otherwise valid laws cause minority religions, the Free Exercise Clause should be read to protect minority religions against this flaw in the political process.<sup>58</sup>

Opponents to free exercise exemptions, on the other hand, would limit the scope of the free exercise clause to religious opinions and actions which do not contravene laws applied equally to all citizens.<sup>59</sup>

As noted above, the Supreme Court's position has varied over the years. In 1879 the Court, in approving laws against Mormon polygamy, restricted free exercise to belief alone, arguing that granting an exemption would "make the professed doctrines of religious belief superior to the law of the land and in effect...permit every citizen to become a law unto himself."<sup>60</sup> In the 1940's, the Court began to expand "potential religious exemptions by heightening judicial scrutiny to ensure that generally applicable laws do not unduly burden free exercise of religion, including religiously grounded conduct."<sup>61</sup> In 1972, however, the Court reversed directions again. The new approach was exemplified in a much discussed case involving the religious practices of Native Americans:

Refusing to constitutionalize sacramental peyote use in an Oregon unemployment benefits case, Justice Antonio Scalia's majority opinion revived the Jefferson-Waite principle that free exercise rights shelter opinions only, undercut the preferred freedom concept, and restored balancing of incidental burdens on religious activity to the political process.<sup>62</sup>

The degree to which the United States Constitution not only protects religious belief and freedom of conscience but also serves to "maximize the space for religious practice" marks an important difference between the American model and the French Republican model. Whether or not the pendulum has (temporarily?) swung away from supporting religiously motivated exemptions to general legal practice, it is undeniable that such exemptions, such privileging of religious belief, is more prevalent in the United States than in France. There has not been in the United States, to my knowledge, the same controversy over Islamic dress for girls in the public schools for example. It seems clear that, even under the more restrictive approach to exemptions currently favoured by the

Supreme Court, such disputes would be settled in favour of religious expression. What is the justification for this privileging of religion? Greene notes that there are “Three standard efforts to distinguish religious belief from secular belief;” these are that “religion is divisive, that religion relies on a source of authority other than the state, and that religion is not provable”.<sup>63</sup> But, as Greene notes, these criteria also characterize many secular beliefs and, I would add, could also be attributed to beliefs and practices arising out of cultural traditions, both to the extent that these are religious in nature, and to some of their more secular components. Secular beliefs and cultural traditions are also divisive, are not “provable” in any meaningful way, and certainly often (but not always) derive their authority from something other than the state.

What then accounts for the special treatment of religious belief? The empirical answer is undoubtedly the prevalence of diverse strongly held religious beliefs, both at present and at the time the constitution was adopted. The normative justification that Greene offers is, however, the fact that “only religious belief involves reference to an extra human source of value, of normative authority”.<sup>64</sup> Yet there is no necessary reason why an exemption need appeal to religion. It could, according to Greene”

...be based on the secular ground of respect for the dilemma that would be faced by certain members of the community were they forced to choose between obeying the commands of law and obeying those of a separate font of authority...the exemption might be enacted not because of religious faith but because of toleration for a belief that happens to be based on faith.<sup>65</sup>

But this argument still constitutes, I believe, a bias in favour of religion. There is no reason, logical or normative, why the practice of accommodating citizens’ beliefs and practices should be limited to the religious sphere. Respect for religious freedom depends upon respect for equality and freedom in general, not the reverse. This point has been made in a judgement supporting religious freedom in Canada. Chief Justice Dickson of the Supreme Court of Canada, supported by four other justices

summarized the point as follows:

A truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct. A free society is one which aims at equality with respect to the enjoyment of fundamental freedoms and I say this without any reliance upon s. 15 of the *Charter*. Freedom must surely be founded in respect for the inherent dignity and the inviolable rights of the human person.<sup>66</sup>

The other half of the religious clauses—the establishment clause—is also subject to different interpretations. One position, looking back to Jefferson and Madison, sees the clause as demanding strict neutrality on the part of the state both between the various religious groups and between religion in general and nonreligion:

Separatists like Jefferson and Madison, accenting civil peace and minority rights, construe the establishment clause broadly in order to segregate private religion and public authority into autonomous spheres. Government must be neutral between religion and nonreligion. This subject is depoliticized. Religion is privatized.<sup>67</sup>

Supporters of the alternative position “construe the establishment clause narrowly in order to encourage free exercise of religion and public morality.”<sup>68</sup> The classic statement of this position was made by Justice Story in his Commentaries on the Constitution:

The general, if not the universal, sentiment in America was, that Christianity ought to receive encouragement from the state so far as was not incompatible with the private rights of conscience, and the freedom of religious worship. An attempt to level all religions, and to make it a matter of state policy to hold all in utter indifference, would have created disapprobation, if not universal indignation.<sup>69</sup>

From this perspective, recognizing and supporting the religion of the majority in support of a particular view of public morality is permissible providing it does not constitute an invasion of private conscience, or discriminate against the different sects of the majority community.

Actual practice has varied. Even when application was limited to the federal government, disputes as to what would constitute “establishment” of religion were frequent. The original mottos on the currency and the Great Seal were secular, and a 1797 treaty with Tripoli specifically argued that “the United States of America is not in any sense founded on the Christian religion”.<sup>70</sup> And while

Washington and Adams acquiesced in presidential statements of annual thanksgiving, Jefferson did not.<sup>71</sup> Madison accepted the ceremonies but regretted his approval, as a member of the House, of Congressional Chaplains paid by the government.<sup>72</sup> While Christian symbols have crept into American national life (in 1864, for example, the motto on the national currency was changed to “In God We Trust”), the issue became more contentious when the clause was extended to the states. The classic doctrine of separation was given by the Supreme Court in 1947:

The “establishment of religion” clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions whatever they may be called, or whatever form they may adopt to teach or practise religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect a “wall of separation between Church and State.”<sup>73</sup>

But this general statement does not provide a formula which can be applied to hard cases. To deal with these, the Supreme Court has adopted a “balancing of interests” approach:

...Lemon v. Kiernan...To satisfy the establishment clause a statute or government activity must: (1)reflect a secular purpose, (2)have a primary effect that neither advances nor inhibits religion, and (3)avoid excessive government entanglement with religious organizations.<sup>74</sup>

As usual, however, empirical complexity makes the consistent application of principle difficult. In Howard’s words, “History pulsates in the categorical commands, but applying them consistently proved to be very troublesome”.<sup>75</sup> Major issues litigated have included prayer in the public schools, government display of religious symbols, the teaching of Creation Science, and government aid to religiously affiliated schools.

The treatment of prayer in the public schools has been relatively consistent. Officially

sponsored prayers during regular school activities is viewed as directly coercive and a violation of the establishment clause:

The Supreme Court agrees that it violates the nonestablishment norm for the public schools to institutionalize or otherwise orchestrate prayer—and it agrees that to the extent such governmental action is coercive, the action is especially offensive.<sup>76</sup>

The Supreme Court's position on school prayer is an example of neutrality in the face of the desire of the Christian majority to see their faith recognized and supported by the state; it is, in other words, an example of benign neglect in practice. Opponents of the position, such as then Solicitor General Kenneth W. Starr, reflecting popular opinion, argued that such prayers should be allowed because they were voluntary, supported by majority opinion, and did not amount to government supported coercion.<sup>77</sup> While the dissenters on the court supported this position, arguing for the right of the majority to use state power to impose their norms and noting a "longstanding American tradition of nonsectarian prayer to God at public celebrations generally", the Court's majority did not.<sup>78</sup>

Government display of religious symbols is another area where the demands of nonestablishment clash with dominant cultural practices. Here, probably because the display of symbols is not viewed as directly coercive, the Court has tended to greater accommodation of majority views. The current position is that the mere display on state property of a religious symbol "is not necessarily for government to discriminate in favour of the religion whose symbol it is."<sup>79</sup> Such displays constitute illegitimate establishment

if, and only if, the display is based on the view that one or more religions (or religious practices or tenets) are, as such, better than one or more other religions or than no religion at all.<sup>80</sup>

In other words, absent coercion, motive rather than effect is the dominant consideration: Is a nativity display at Christmas motivated by a desire to promote the superiority of Christian views? Or is it simply a reflection of popular views about Christmas? Actual intent is, of course, often difficult or

impossible to ascertain with any certainty:

It seems doubtful, however, that a municipality would not have displayed, in the town square during the winter holiday season, a creche and a menorah alongside a figure of Santa Clause and a Christmas tree *but for* the view that Christianity and Judaism are, as religions, better along one or another dimension of value than one or more other religions or than no religion at all.<sup>81</sup>

Perry holds that it is possible to attribute a benign intent to the display of such symbols:

It seems more likely that such a scene would be displayed in the town square even absent the view that Christianity and Judaism are, as religions, better; it seems likely that such a scene would be displayed on the basis of the view that *all* the major symbols of the season...should brighten the town square and contribute, each symbol in its own way, to the festive generous spirit of the holidays. This is not to claim that the view that Christianity and Judaism are, as religions, better is necessarily absent, but only that such a view is probably not a basis of the display—or, at least, that it would be very difficult to conclude with confidence that it *is* a basis of the display.<sup>82</sup>

The decision in the particular case at issue, Lynch v. Donnelly<sup>83</sup>, was controversial and generated extensive commentary. Contrary to Perry, many commentators regard the failure of the Court to prohibit such state-supported symbolic displays as serious even if they lack an element of direct state coercion. Van Alstyne, for example, argues:

The state had not merely aided “all” religions but rather had promoted emphatically and exclusively *one* religion...It had used tax money in support of a religious activity and encouraged belief in, and endorsed, the particular holy day—Christ’s Mass—of one sect. It openly participated in the affairs of one church by duplicating in wood and plastic the imagery of a sacred event in order to encourage a general secular, commercial enthusiasm to intensify its holy day. The wall of separation between church and state had clearly been breached by a clear governmental politicized symbolic embrace of one faith’s preferred holy day.<sup>84</sup>

Two points in the contrasting interpretations of the Court’s failure to prohibit state-supported symbolic displays are noteworthy. First, Perry stresses the intentions of those promoting the display while Van Alstyne focuses more on the actual events. Intentions are, of course, generally mixed and impossible to know with any certainty. Second, Perry does not seem to put much weight on how the minority might perceive the symbols as representative of state power and therefore indirectly

coercive. As Douglas Laycock argues:

**...some people want a symbolic affirmation that government approves and endorses their religion...many of the people who want this affirmation place little or no value on the costs to religious minorities.<sup>85</sup>**

The third establishment issue that has been extensively litigated is the teaching of so-called Creation “Science” in the public schools as an alternative explanation for the origins of life. The Supreme Court has consistently supported the position which, in my view, constitutes neutrality: it has refused to permit the teaching of Creationism on the grounds that this would amount to state-supported propagation of a particular religious dogma and thus violate the constitutional prohibition of the establishment of religion.<sup>86</sup> Given the high degree of public support for religion and the widespread skepticism concerning scientific explanations of the origin of life, the court’s consistency in ruling against the teaching of Creationism demonstrates that on this issue at least, albeit an issue where neutrality is supported by all the prestige of modern science, neutrality is possible.

On the fourth major establishment issue—government aid to religiously affiliated schools—the Court’s defence of non-establishment has been less clear. Perry summarizes the history of the relevant decisions as follows:

**There is a virtual consensus among commentators that the Supreme Court’s decisions about government aid to religiously affiliated schools—in particular, the court’s chaotic collection of decisions about aid to religiously affiliated elementary and secondary schools—are an unholy mess.<sup>87</sup>**

The “dominant American legal tradition since the mid-nineteenth century” is to prohibit any financial aid to religious schools, but this position itself has non-neutral origins:

**We can trace the political origin of that position, and it is not pretty. It traces not to any careful deliberation about constitutional principles or the proper relation of church and state. Rather, it traces to vigorous nineteenth century anti-Catholicism and the nativist reaction to Catholic immigration. The fact is that no one in America worried about religious instruction in schools before Catholic immigration threatened the Protestant hegemony.<sup>88</sup>**

Be that as it may, direct state funding of separate religious schools is not, unlike in Canada, permitted in the United States. Rather the issues revolve around more indirect ways of aiding such schools, including school vouchers in support of private education in general and aid for programs which are available to all schools such as student transportation etc. Perry again argues that it is the motivation for such aid that is constitutionally important rather than the objective fact that it serves to aid religious schools:

...a state...might well be persuaded to provide some minimal amount of financial aid to all nonpublic elementary and secondary schools...A state might provide such aid based partly on the view that Catholic elementary and secondary schools are an invaluable educational resource for the community and cannot be permitted to fail for lack of adequate financial support...a quite plausible view...it seems farfetched to suppose that if today a state would provide such aid, it would invariably do so based on the view that Roman Catholicism (or Christianity generally) is, as religion, better than other religions or than no religion. Yet, only the latter view, not the former, is constitutionally problematic under the nonestablishment norm.<sup>89</sup>

This view is in fact, he argues, the current majority position of the Supreme Court:

...government may give financial aid to religiously affiliated schools...if and only if, first, the criteria for such aid are religiously neutral and, second, the aid program is not a subterfuge for affirming one or more religions as such.<sup>90</sup>

To hold the contrary position—the position that religiously affiliated schools may not receive government aid even if the aid meets this test “would” he argues “be to hold that government must discriminate against religious activities”.<sup>91</sup> Perry’s and the Court’s position ignores the fact that the policy results in substantive discrimination. Only organized religious groups large enough to establish independent schools can benefit. Individuals whose religious views—their comprehensive views—do not encompass the idea of an organized group can not benefit from such aid.

This completes my overview of the American example of a religiously neutral state. Before proceeding to discuss the much different Canadian experience, I wish to draw some general conclusions concerning the applicability of the American model for the issue of a culturally neutral

state.

First, the two principle of religious freedom established by the First Amendment to the United States Constitution play (or should play) different roles. The rights guaranteed by the free exercise clause can, in some measure at least, coexist with a religious establishment as witnessed by the freedoms available in many European states with established churches. But, as will become evident in my discussion of Canada, establishment in a strong sense does have implications for, and is ultimately incompatible with, full religious liberty. If this is the case for religion, it is probably so for culture as well. Furthermore, there arises the question as to why special liberty should be accorded to beliefs and practices which are religious in nature as opposed to secular and cultural. In societies which are diverse in culture, religion and comprehensive views, it would seem that whatever degree of neutrality is appropriate is appropriate for all beliefs and practices. The second part of the religious clause of the Bill of Rights—non-establishment—requires that the state not favour one religious view over another. My reading of the United States experience is that there has been a relatively good faith attempt to put this into practice. It is certainly possible to dispute the current court position on symbolic displays and aid to religious schools; it is also important to recognize that, because the majority professes some form or other of Christianity, civil society will inevitably be organized to suit the majority's convenience. These facts do not, however, argue against the ideal of a neutral state; they simply demonstrate that practice has never, can never, and therefore will never, match the ideal. The same would hold if the state tried to adopt a policy of neutrality towards culture.

Second, the issues as they relate to religion are complex and the solutions adopted are open-ended and provisional. The current situation is the result of a two hundred year debate about the meaning and feasibility of a religiously neutral state. In recent times, this debate often culminates in policies emanating from court decisions. Nonetheless, it is a societal debate with initiatives often

arising in the popularly based legislative and executive branches which are themselves responding to public pressures and public debates. The fact that the specific policies adopted at any one point in time are not perfect and leave many unsatisfied, some arguing that too much consideration has been given to the views of the majority and others arguing the reverse, in no way invalidates the claim that degrees of neutrality can be implemented in practice. Such divergences of opinion simply confirm that some don't share the ideal of neutrality as a concept, that those who support the concept have different conceptions of it, and that practice always fails to live up to the ideal. Again, there is no support for the view that cultural neutrality is not possible.

Third, the nature of the issues litigated—exemptions from generally applicable laws, prayer in public schools, the content of the public school curriculum, government display of religious symbols and government support for religious schools—are themselves issues that are in other societies and contexts frequently put forward as demands for cultural recognition. Whether they are justified on the grounds of religious liberty or on account of their importance to a cultural tradition is largely a matter of semantics or, as in the United States, the result of the fact that the constitution privileges religious claims.

Fourth, the same set of rights and freedoms are necessary for a culturally neutral state as for one which is religiously neutral: the right to freely express or practice one's culture (religion) in private and in public; and the requirement that the state avoid establishing one culture (religion) as opposed to another. Conflicts about the nature of these requirements, and perhaps between them, are inevitable. Many cultural practices may conflict with established laws and practices in the same way that religious practices do; requests for exemptions from generally applicable laws and regulations are a major component of multicultural politics. If the state is to be neutral towards culture in the same way that it is towards religion it must adopt the same principles. As I discussed above, there are two

general positions as to what the right to “free exercise” entails: does it simply preclude the government from explicitly favouring or discriminating against a particular group, or does it require the state to avoid policies that, while nondiscriminatory, may impinge on religious practice? This is not an either/or choice; there is in fact a variety of possible positions on the continuum between the two extremes. With regards to religion, American practice has varied over time, moving sometimes in one direction, sometimes in the other. My point here is that where exactly a given society comes out, or should come out, on the continuum is an appropriate subject of public debate, but there is no reason not to apply the same stand to culture as is applied to religion. I, personally, hold that individual cases should be addressed in context, but that in any liberal society, especially one characterized by cultural diversity, individual freedom should weigh heavily in any decision. Hence, I would argue for the “accommodationist” approach which has, sometimes, characterized American practice: a cultural practice is to be permitted in private and in public unless there are substantive overriding public reasons why it should not be so permitted. The stress should be on the idea of equal consideration and freedom of the individual, not on the nature of her beliefs and practices.<sup>92</sup>

Nonestablishment of culture could and should be managed in the same way as nonestablishment of religion: the state should avoid, to the extent possible, endorsing or adopting the cultural practices of any cultural group while adopting an attitude of indifference towards the cultural practices of its citizens.

### **5.3.2. Establishment of Religion – The Canadian Experience**

The legal position and treatment of religion in Canada has differed sharply from that of the United States. Prior to the 1982 Charter of Rights there was no constitutional guarantee of religious freedom, nor any prohibition of establishment. On the contrary, “Establishment provisions are not unknown in Canadian constitutional history, and some statutory expressions, be they pre-

Confederation law in the matter of denominational rights recognized in section 93 [of the British North America Act] or as otherwise protecting certain denominations, remain part of the received law".<sup>93</sup> The 1982 Constitution Act introduced constitutional protection for "freedom of conscience and religion" (Section 2(a)) and stated that "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 based on religion".<sup>94</sup> It did not, however, provide for the separation of church and state, nor take away specific rights accorded to certain favoured religious denominations, particularly in matters of school funding.<sup>95</sup> Subsequent experience shows that there is a conflict between religious freedom and official recognition of religion or specific religious denominations.

Prior to 1982 freedom of religion and conscience could be legally infringed by both levels of government:

...conclusions from the jurisprudence under the British North America Act...the basic doctrinal approach of the [Canadian Supreme] Court was the following: the federal government can limit freedom of religion and generally regulate religious activity under its criminal law jurisdiction found in section 91(27). Provincial legislation can limit freedom of religion if its primary purpose can be characterized as falling under one of the heads of section 91.<sup>96</sup>

Issues of religious freedom were litigated during the pre-Charter period; the most frequent matter to reach the courts was the validity of various Sunday closing laws. Given the lack of constitutional protection for freedom of conscience and religion, and the absence of legal barriers to institutionalizing the religious preferences of the majority, these cases were normally decided on the basis of whether or not the enacting government was acting within the limits of its constitutional powers. The result was a certain measure of protection for religious liberty, but protection accorded in an arbitrary manner. In Macklem's summary words:

...the Sunday legislation cases represent not statements concerning religious freedom, but statements in relation to the allocation of power between the two levels of government...religious activity received limited judicial protection – protection easily

overridden by sophisticated drafting techniques on the part of provincial governments. The primary concern of the courts in this regard was the accommodation of competing values of federalism...any protection of religious freedom under the *British North America Act* was thus arbitrary protection, dependent upon doctrines developed for another purpose.<sup>97</sup>

Further protection was often provided by various pieces of non-constitutional human rights legislation.

The 1982 Constitution Act, on its face, protects religious freedom without separating church and state. The Canadian judicial system has recognized, however, that “concomitant with protection of a certain religion is the non-protection of another” because any “selective protection by the state has the effect of limiting religious freedom in general”.<sup>98</sup> Macklem, writing in 1984 before the impact of Charter litigation had been felt, argued that:

On these grounds, a separation of church and state principle, at least to the extent it would be compatible with other constitutional provisions, can be read into section 2(a) [the guarantee of “freedom of conscience and religion”].

Such a view can also be supported by section 15(1) of the *Charter*, which provides for equality before and under the law. It can be argued that protection of a certain religion constitutes state-sanctioned discrimination insofar as it represents unequal treatment on religious grounds.<sup>99</sup>

Subsequently, the Supreme Court of Canada did exactly that; it recognized, within the limits forced on it by the constitutional establishment of religion, that special recognition and support for one religion is not compatible with equal freedom of conscience and religion for all citizens.

The Court set out this principle in R. v. Big M. Drug Mart Ltd. (again, a Sunday closing case). First the Court interpreted religious freedom in a broad manner by holding that even a corporation, which has no religion itself, can challenge a law on the grounds that the law infringes religious freedom:

Whether a corporation can enjoy or exercise freedom of religion is...irrelevant...if the law impairs freedom of religion it does not matter whether the company can possess religious belief...

...A law which itself infringes freedom is, by that reason alone, inconsistent with s. 2(a) of the *Charter* and it matters not whether the accused is a Christian, Jew, Muslim, Hindu, Buddhist, atheist, agnostic or whether an individual or a corporation. It is the nature of the law, not the status of the accused that is at issue.<sup>100</sup>

Furthermore, both the intent and the effect of a law “are relevant in determining constitutionality; either an unconstitutional purpose or an unconstitutional effect can invalidate legislation”.<sup>101</sup> If the intent of the state is to establish or recognize a given religious view, the law instantiating the intent is constitutionally prohibited:

If the acknowledged purpose of the *Lord's Day Act*, namely, the compulsion of sabbatical observance, offends freedom of religion, it is unnecessary to consider the actual impact of Sunday closing upon religious freedom.<sup>102</sup>

Intent to establish any particular religious view or religion in general beyond the degree of establishment specifically provided for in the Constitution would therefore seem to violate religious freedom:

The protection of one religion and the concomitant non-protection of others imports disparate impact destructive of the religious freedom of the collectivity.<sup>103</sup>

Any attempt by the state to make law based upon a particular religious belief, Christianity in this case, “works a form of coercion inimical to the spirit of the *Charter* and the dignity of all non-Christians;” the theological content of such legislation would be “a subtle and constant reminder to religious minorities...of their difference with, and alienation from the dominant religious culture”.<sup>104</sup>

The arguments presented by the Supreme Court that any official recognition of one religion violates the equal freedom of adherents to other views are, in my view, valid. To the extent that culture and religion are overlapping concepts and to the extent that culture is a comprehensive view, the same arguments could be made against the state recognition and support for any particular culture.

#### **5.4. Language**

The arguments for treating religion and culture in a similar manner and for avoiding the formal state establishment of either are, to me at least, compelling. The strongest argument against such a position is that based on language. Language, without question, is one (important) component of the concept of culture which does not seem similar to religion or to a comprehensive view. If culture and comprehensive views are overlapping concepts as I argued above, then language is outside the area of overlap. Moreover, it would be foolish to deny that it is enormously advantageous for an individual when a society functions in his or her native language and an enormous disadvantage when it does not; very few express themselves as well in a second or third language as they do in their mother tongue. I would also admit that state action—the language(s) of education and public administration, the drafting of laws and regulations in a particular language, the ability to receive government services, etc.—all inevitably favour, in their impact, some languages over others. Empirically speaking, there is no way around these facts. How then do I propose to fit the question of language into my argument?

Carens argues that:

”there are two conflicting ideal types of what language acquisition entails with respect to one’s own cultural commitments. The first sees language in purely instrumental terms as a means of communication and no more. On this account, learning a language has no necessary or even likely impact on one’s other cultural commitments. Call this the thin theory of language. The second view sees a shared language as centrally connected to and expressive of the culture of a community. On this view, learning a language shapes our cultural options and commitments in profound ways. Call this the thick theory of language.<sup>105</sup>

The thick theory in its strongest empirical form argues that “cognitive organization is directly constrained by linguistic structure”.<sup>106</sup> Philosophically, the idea can be traced back at least to Herder, Fichte and von Humbolt.<sup>107</sup> Amongst contemporary Affirmationists, Taylor is, as we saw, particularly forceful in arguing for the importance of language; Kymlicka too, in a different way, uses language to

underpin his policy prescriptions. The thick view of language is also the position of the Supreme Court of Canada which, in 1985, opined:

The importance of language rights is grounded in the essential role that language plays in human existence, development and dignity. It is through Language that we are able to form concepts; to structure and order the world around us. Language bridges the gap between isolation and community, allowing humans to delineate the rights and duties they hold in respect to one another, and thus to live in society.<sup>108</sup>

In 1988, the Court argued that an individual is denied his or her right to freedom of expression if denied the right to expression in the language of his or her choice:

Language is so intimately related to the form and content of expression that there cannot be true freedom of expression by means of language if one is prohibited from using the language of one's choice. Language is not merely a means or a medium of expression; it colours the content and meaning of expression.<sup>109</sup>

The thick theory is a particular empirical and philosophical hypothesis which is highly controversial; there is, as far as I am aware, no empirical proof of its validity. Carens argues that both the thick and thin extremes are probably off the mark and that "what language acquisition entails for other dimensions of one's cultural world ranges between the two types, varying according to...circumstances."<sup>110</sup> In addition to being controversial, undemonstrated, and, probably, undemonstrable, the thick view is also unnecessary. It is unnecessary in order to account for individuals' attachment to their own language; such an attachment can be explained by the uncontroversial pragmatic advantages of living in a society in which one can use one's language in all important activities. Furthermore, the acceptance of the thick view of language provides next to no assistance in delineating solutions to the political issues raised by language. If language is important in the way argued for by the thick theory, it is important for everyone in that way; everyone would have the right to live in his or her own language. But not everyone can, as a matter of fact, live in a society where their language predominates; nor can all minorities reasonably expect to be accommodated by costly government action to allow them to live in the language of their choice. Decisions about these

matters must be made on some grounds other than the view that language has some sort of transcendental value.

Unfortunately, however, a refusal to accept the thick view of language does not in an of itself give any answers either. Political choices must still be made. Theories of public reason and deliberative democracy must deal with the brute reality that deliberation and public reasoning occur in a language. few people ever achieve fluency in anything but their mother tongue, this will not change in the immediate future, and, most likely, will never change. Deliberation can only take place in what Sue Wright calls a “community of communication”.<sup>111</sup> As she summarizes it:

A community of communication allows the organization of the procedures necessary for the public life of a democratic polity. It permits all citizens to participate in the debate which constitutes the political process. It allows the communication circuits of forms and associations.<sup>112</sup>

It is not language itself which has political relevance: it is the need for democratic communication in some language which is normatively relevant. The issue becomes, from this perspective, the nature and requirements of a community of communication. Can such a community function in a democratic manner with more than one language? What should be done for minorities who are not capable of functioning in the dominant language? Is it permissible for the state to encourage (and state encouragement always carries some element of coercion) minorities to learn the dominant language. What is the relationship between a community of communication and the nation-state. All of these issues remain when one discards the thick theory of language and adopts the view that language can be considered in a purely instrumental fashion. I address these issues in Chapter 7; Section 7.2.2. discusses the policy considerations which would guide the indifferent state’s policies on language.

### Notes

1. Paul Edwards, ed. The Encyclopaedia of Philosophy (New York, London: Macmillan Publishing Co., Inc., 1967), s.v. “Culture and Civilization,” by Raymond Williams.

2. Ibid., 273.
3. Ibid., 273.
4. Ibid., 274.
5. Jeremy Waldron, "Cultural Identity and Civic Responsibility," in Citizenship in Diverse societies, ed. Will Kymlicka and Wayne Norman (Oxford: Oxford University Press, 2000), 160-161.
6. Martin E. Marty, "Introduction," in Religion, Ethnicity, and Self-Identity, ed. Martin E. Marty and R. Scott Appleby (Hanover and London: University of New England, 1997), 8.
7. Barry is a recent notable exception to this general liberal blindness to the continuing importance of religion in contemporary politics: "Most though not all, of these exemptions [to laws and regulations] are claimed on religious belief. Indeed, Peter Jones has gone so far as to suggest that, if we leave aside the 'religious component of culture', there should be 'few, if any problems of mutual accommodation' arising from cultural diversity." Barry, Culture & Equality, 33. Barry is citing Peter Jones, "Rushdie, Race and Religion," Political Studies 38 (1990): 687-694, at 694.
8. Marty, "Introduction", 6.
9. Raymond Grew, "Cultural Context of Fundamentalism," in Religion, Ethnicity, and Self-Identity, 28.
10. Lois Sweet, God in the Classroom (Toronto: McClelland & Stuart Inc., 1997), 107-109.
11. Tariq Modood, Sharon Beihon and Satman Virdee, Changing Ethnic Identities (London: Policy Studies Institute, 1994), 8. See also Nimmi Hutnik, Ethnic Minority Identity (Oxford : Clarendon Press, 1991) and Marcy C. Waters, Ethnic Options (Berkeley: University of California Press, 1990) for other sociological studies of the variability of the components of identity.
12. Modood, Beihon and Satman, Changing Ethnic Identities, 56.
13. Ibid., 57.
14. Ibid., 59.
15. Ibid., 59. For a similar conclusion in the British context see Hutnik, Ethnic Minority Identity, 90-91 where she concludes "For the South Asian Group nationality an religion are the salient dimensions...For the Afro-Caribbean group, the race dimension proves extremely significant."
16. Kymlicka, Multicultural Citizenship, 40.
17. Boldt, Surviving as Indians, 182-183.
18. Ibid., 183.
19. Samuel P. Huntington, The Clash of Civilizations (New York: Simon & Schuster, 1996), 42.

20. Ibid., 59.
21. Mark Juergensmeyer, The New Cold War? (Berkeley, Los Angeles, London: University of California Press, 1993), 4.
22. Ibid., 30.
23. Ibid., 33.
24. Ibid., 179.
25. Stephen L. Carter, The Culture of Disbelief (New York: Harper Collins, 1993), 4.
26. Nomi Maya Stolzenberg, “‘He Drew a Circle That Shut Me Out’: Assimilation, Indoctrination, and the Paradox of a Liberal Education,” Harvard Law Review 106 (1993): 582, 583 cited in Macedo, Diversity and Distrust, 163.
27. See Andre Charron ed., Ecole et religion (Montréal: Edition Fides, 1995), for an overview of the debate.
28. See Solange Lefebvre, “La Revanche des laics,” Le Devoir, March 20, 2000, B-6 and Bob Harvey, “The Lord’s Prayer Must Go, Jewish Group Insists,” Ottawa Citizen, March 23, 2000, A-1 for examples of the topicality of this issue.
29. Joseph H. Carens. Culture, Citizenship, and Community (Oxford: Oxford University Press, 2000), 70, note 16.
30. Amy Gutmann adopts this view. Referring to Walzer’s view that there are two types of liberalism—one which permits affirmation and recognition of a culture, and another, appropriate for immigrant societies such as the United States (and Canada), which does not. She argues that “Perhaps the two...are better interpreted not as two distinct and politically comprehensive conceptions of liberalism but as two strands of a single conception of liberal democracy that recommends...state neutrality in certain realms such as religion, but not in others, such as education, where democratically accountable institutions are free to reflect the values of one or more cultural communities as long as they also respect the basic rights of all citizens.” Amy Gutmann, “Introduction,” in Multiculturalism and “The Politics of Recognition,” ed. Amy Gutmann (Princeton: Princeton University Press: 1992), 12.
31. Stephen Holmes, Passions & Constraints (Chicago and London: The University of Chicago Press, 1995), 206
32. Barry, Justice as Impartiality, 165, note c. But for an entertaining discussion of how blasphemy laws in Great Britain were used as recently as 1977 to harass a Gay newspaper and for the current status of the law see Gregory Robertson, The Justice Game (London: Vintage, 1999), 135-161.
33. See Marcel Gauchet, La religion dans la démocratie (Paris: Editions Gallimard, 1998); Gérard Raule, Apologie de la citoyenneté (Paris: Les Editions du Cerf, 1999); and Henri Pena-Ruiz, Dieu et Marianne (Paris: PUF, 1999).

34. Albert P. Blaustein and Gisbert H. Flanz, Constitutions of the Countries of the World (Dobbs Ferry, N.Y.: Oceana Publ., 1987), 3 cited in J. Woodford Howard, Jr. "The Robe and the Cloth" in The Canadian and American Constitutions in Comparative Perspectives, ed. Marian C. McKenna (Calgary: University of Calgary Press, 1993), 26.

35. Howard Jr., "The Robe and the Cloth", 26.

36. Ibid., 26.

37."At the time that the first amendment was adopted five states had established churches—Massachusetts, Connecticut, New Hampshire, Maryland, and South Carolina". William Van Alstyne, "Trends in the Supreme Court: Mr. Jefferson's Crumbling Wall—A Comment on Lynch v. Donnelly," Duke Law Journal (Vol. 1984:770): 773, note 8.

38. Robert Booth Fowler, Religion and Politics in America (Metuchen, N.J., and London: The American Theological Library Association and The Scarecrow Press, Inc., 1985), 13-14.

39. Ibid., 14. See also William G. McLaughlin, "The Role of Religion in the Revolution," in Essays on the American Revolution, ed. Stephen G. K. Kurtz and James H. Jutson (Chapel Hill and New York: University of North Carolina Press Hill and W.W. Norton & Company, Inc., 1993), 247 which describes religion as "embedded into every aspect and institution of American life".

40. Stephen Botein, "Religious Dimensions of the Early American State," in Beyond Confederation, ed. Richard Beerman, Stephen Botein and Edward C. Carter III (Chapel Hill & London: University of North Carolina Press, 1984), 320.

41. Ibid., 319.

42. Van Alstyne, "Trends in the Supreme Court: etc.," 772. See also Howard, Jr., "The Robe and the Cloth," 27-28 for a summary.

43. Howard, Jr., "The Robe and the Cloth", 27. This view is rooted in a particular (Protestant Christian) theology and is familiar to liberals from John Locke's "A Letter Concerning Toleration": "For no man can, if he would, conform his faith to the dictates of another. All the life and power of true religion consist in the inward and full persuasion of the mind." in John Locke, On Politics and Education (Roslyn, N.Y.: Walter J. Clack, Inc., 1947), 26. See James Tully, An Approach to Political Philosophy: Locke in Context (Cambridge: Cambridge University Press, 1993), 55-62 for a discussion.

44. Howard, Jr., "The Robe and the Cloth," 27. The phrase "garden of God" is taken from Mark DeWolfe Howe, The Garden and the Wilderness (Chicago: University of Chicago Press, 1965), 6.

45. See Glenn T. Miller, Religious Liberty in America (Philadelphia: The Westminster Press, 1976), 65-66; Lance Banning, The Sacred Fire of Liberty (Ithaca and London: Cornell University Press, 1995), 83-94; and William Lee Miller, The First Liberty (New York: Alfred A. Knopf, 1986), 26-29.

46. Howard, Jr., "The Robe and the Cloth," 28. In note 12 on 38, Howard summarizes the situation at the time the amendment was adopted as follows: "Connecticut, Georgia, Massachusetts, New Hampshire, South Carolina and Vermont had multiple establishments providing nonpreferential aid to Christian dominations in each state. The Maryland constitution authorized public support which the legislature did not provide."
47. *Ibid.*, 28.
48. Van Alstyne, "Trends in the Supreme Court: Mr Jefferson's Crumbling Wall—A Comment on *Lynch v. Donnelly*", 778.
49. See Macedo, Diversity and Distrust 48-49 and 59-60 for a discussion of the initial Catholic immigration.
50. Cantwell v. Connecticut, 310 U.S. 296 (1940), at 303-304 cited in Martin E. Marty, "The Virginia Statute Two Hundred Years Later," in The Virginia Statute for Religious Freedom, ed. Merril D. Peterson and Robert C. Vaughan (Cambridge: Cambridge University Press, 1988), 5.
51. Howard, Jr., "The Robe and the Cloth," 29.
52. Michael J. Perry, Religion in Politics (New York, Oxford: Oxford University Press, 1997), 14.
53. *Ibid.*, 14.
54. Howard Jr., "The Robe and the Cloth", 29.
55. Perry, Religion and Politics 25. See note 53 on page 116 for references.
56. Howard, Jr., "The Robe and the Cloth", 31.
57. Perry, Religion in Politics, 25.
58. Abner S. Greene, "The Political Balance of the Religion Clauses," The Yale Law Journal (Vol. 102:1611): 1639.
59. Howard, Jr., "The Robe and the Cloth," 29. See note 15 on the same page for references.
60. Reynolds v. United States, 98 U.S. 145 (1879) at 163 cited in Howard, Jr., "The Robe and the Cloth," 31.
61. Howard, Jr., "The Robe and the Cloth", 31. For references see his note 23. The issues addressed included exemption from compulsory flag salutes, taxes on religious pamphlets, and exemption from the requirement to work on a religious holy day in order to receive unemployment benefits.
62. Howard, Jr., "The Robe and the Cloth", 31. The case in question was Employment Division, Oregon Department of Human Resources v. Smith, 485 U.S. 660 (1988); 494 U.S. 872 (1990).
63. Greene, "The Political Balance of the Religion Clauses", 1616.

64. *Ibid.*, 1617.

65. *Ibid.*, 1625-1626.

66. Jerome E. Bickenback, ed., Canadian Cases in the Philosophy of Law (Third Edition), (Peterborough: Broadview Press, 1998), 69-70. The case was R.V. Big M Drug Mart Ltd. (1985) 1 S.C.R. 295.

67. *Ibid.*, 32. See also Perry Religion in Politics, 14-20; Van Alstyne, "Trends in the Supreme Court, etc.," 774-779; and Greene, "The Political Balance of the Religion Clauses," 1614. Greene gives the standard justification as follows: "Basing law expressly on values whose authority cannot be shared by citizens as citizens, but only by those who take a leap of faith, excludes those who do not share the faith from meaningful participation in political discourse and from meaningful access to the source of normative authority predicating law."

68. Howard, Jr., "The Robe and the Cloth", 32.

69. Cited in *Ibid.*, 32. Commentaries (1833), 3: 726. Distinguishing between supporting and forcing religion, Story added on page 728: "The real object of the amendment was, not to countenance, much less to advance, Mahometanism, or Judaism, or infidelity, by prostrating Christianity; but to exclude all rivalry among Christian sects, and to prevent any national ecclesiastical establishment, which should give an hierarchy the exclusive patronage of the national government. It thus cuts off the means of religious persecution, (the vice and pest of former ages) and of the subversion of the rights of conscience in matters which had been trampled upon almost from the days of the Apostles to the present age".

70. Van Alstyne, "Trends in the Supreme Court, etc.," 775. Van Alstyne cites from The Treaty of Peace and Friendship, November 4, 1796-January 3, 1797, United States-Tripoli, art. XI 8 Stat. 154, 155, T.S. No. 358. In Note 17 he notes that this declaration on non-Christianity was, ten years later, dropped from a revised version of the treat.

71. *Ibid.*, 775.

72. *Ibid.*, 776.

73. Everson v. Board of Education 330 U.S. 1 (1947), 15-16 cited in Howard, Jr., "The Robe and the Cloth", 36-37.

74. Howard, Jr., "The Robe and the Cloth", 45.

75. *Ibid.*, 45.

76. Perry, Religion and Politics, 20-21. The Court, on June 19, 2000, in Santa Fe Independent School District v. Jane Doe, reinforced its general position when it public schools cannot allow student-led prayer before high school football games. The avoidance of coercion continued to be the chief concern: "The high court rejected the argument that the pre-football prayer was an example of 'private speech' because the students, not school officials, decided the prayer matter.

But [Justice] Stevens wrote that the students were able to deliver only religious messages deemed 'appropriate' by the school district. That meant, he wrote, 'that minority candidates will never prevail and their views will be effectively silenced.'

'Even if we regard every high school student's decision to attend a home football game as purely voluntary, we are nevertheless persuaded that the delivery of a pre-game prayer has the improper effect of coercing those present to participate in an act of religious worship', he wrote." CNN report <http://www.cnn.com/2000/Law> June 19, 2000.

77.Howard Jr., "The Robe and the Cloth", 51.

78.Lee v. Weisman 112 S. Ct. 2649 (1992), 2679, cited in *Ibid.*, 51. The dissenting opinion in the recent decision, noted above, to ban prayer before athletic matches took the same position: "Chief Justice William Rehnquist, writing a strongly-worded dissenting opinion, accused the majority of 'distorting existing precedent' to rule that the policy violated the First Amendment, which gives the freedom of speech. 'But even more disturbing than its holding is the tone of the Court's opinion; it bristles with hostility to all things religious in public life. Neither the holding nor the tone of the opinion is faithful to the meaning of the Establishment Clause,' Rehnquist wrote, noting that the nation's first president, George Washington, himself had called for a day of 'public thanksgiving and prayer.'"

79.Perry, Religion in Politics, 21.

80.*Ibid.*, 21.

81.*Ibid.*, 21.

82.*Ibid.*, 21.

83.104 S. Ct. 1355 (1984).

84.Van Alstyne, "Trends in the Supreme Court: Mr. Jefferson's Crumbling Wall—A Comment on *Lynch v. Donnelly*", 781.

85.Douglas Laycock, "Summary and Synthesis: The Crisis in Religious Liberty," The George Washington Law Review., Vol. 60 No.3: 844.

86.For a succinct summary of the major decisions from 1968-1997 see Niles Eldridge, The Triumph of Evolution (New York: W. H. Freeman and Company, 2000), 182-184.

87.Perry, Religion in Politics, 23.

88.Laycock, "Summary and Synthesis: The Crisis in Religious Liberty", 845. See Macedo, Diversity and Distrust, Chapter 2 for a detailed account.

89.Perry, Religion in Politics, 23.

90.*Ibid.*, 23.

91. Ibid., 24.

92. Barry, on the other hand, stresses the importance of equal treatment and equal applicability of the law arguing that exemptions to laws and regulations are difficult to justify in principle and pernicious in practice. Barry, Culture & Equality, 40-54. Barry's arguments on this point demonstrate, in my view, the tendency of theorists to (over) emphasize theoretical consistency and coherence.

93. Irwin Cotler, "Freedom of Conscience and Religion" in The Canadian Charter of Rights and Freedoms, second edition ed. Gerald-A Beaudoin and Ed Ratushny (Toronto: Carswell, 1989), 1967.

94. Cited in Patrick Macklem, "Freedom of Conscience and Religion in Canada," University of Toronto Faculty of Law Review 42 (1984): 71.

95. Ibid., 74 and Cotter, "Freedom of Conscience and Religion," 169-172. The BNA Act provided in s.93(1) for the protection of denominational privileges existing at the time of Confederation and this protection is continued by s. 29 of the 1982 Constitution Act.

96. Macklem, "Freedom of Conscience and Religion", 57.

97. Ibid., 57.

98. Ibid., 74.

99. Ibid., 74.

100. Bickenback, ed., Canadian Cases in the Philosophy of Law, 66.

101. Ibid., 67.

102. Ibid., 67.

103. Ibid., 69.

104. Ibid., 68.

105. Carens, Culture, Citizenship and Community, 128.

106. Joshua A. Fishman, The Sociology of Language (Rowley [Mass.]: Newbury House Publishers, 1972), 156. Fishman acknowledges, however, that: "Intriguing though this claim may be, it is necessary to admit that many years of intensive research have not succeed in demonstrating it to be tenable...no one has successfully predicted and demonstrated a cognitive difference between two populations on the basis of...their language alone." (Page 157) Fishman said this in 1972, but I assume that if a research breakthrough had been made subsequently, the Affirmationists would have, loudly, published the fact.

107. John Edwards, Language, Society and Identity (Oxford: Basil Blackwell, 1985), 23-27.

108. Supreme Court Reference re. Manitoba Language Rights [1985] S.C.R. 721 at 744 cited in Ramsay Cook, "Language Policy and the Glassophagic State," in Language and the State, ed. David Schneiderman (Cowansville (Quebec) Canada: Les Editions Yvon Blais Inc., 1991), 73.

109. Attorney General of Quebec v. La Chaussure Brown's Inc. et al (1988), 54 D.L.R. (4<sup>th</sup>) note 17 at 604 cited in Schneiderman ed., Language and the State, 80.

110. Carens, Culture, Citizenship and Community, 128.

111. Sue Wright, Community and Communication (Buffalo, Toronto, etc.: Multilingual Matters Ltd., 2000).

112. *Ibid.*, 231.

## **6.0 Democracy, Deliberation and Public Reason**

Chapter 5 closed with Wright's concept of a "community of communication". Wright argues, and it is a widely held liberal position, that the citizens of a democratic state must deliberate and reason together about public issues. I would extend the argument and suggest that it is the willingness of a group of individuals to do this which is both the necessary and sufficient normative foundation for the liberal democratic state; it is this collective willingness to reason together which justifies, to the extent justification is possible, separate sovereign states. I will, however, present no arguments to support the idea that this is a sufficient condition for democratic legitimacy; I focus solely on the idea that it is at least a necessary one.<sup>1</sup>

The philosophical debate about public reason and deliberation has generated an enormous literature and a variety of conflicting positions.<sup>2</sup> I will not explore the debate in any detail. After an overview of the broader issues, I concentrate on three points relevant to culture and democratic deliberation. First is the idea of consensus: should the goal of deliberation and public reason be a moral consensus? Second, is there sound justification for limiting the nature and type of arguments admissible to public debate? And third, is state affirmation of culture compatible with vigorous democratic deliberation? My answers are no, no and again no.

### **6.1. Deliberation and Public Reason: Preliminary Considerations**

John S. Dryzek argues that until recently:

...the democratic ideal was seen mainly in terms of aggregation of preferences or interests into collective decisions through devices such as voting and representation.<sup>3</sup>

From approximately 1990, however, the theory of democracy has taken "a strong deliberative turn" and "Increasingly, democratic legitimacy came to be seen in terms of the ability or opportunity to participate in effective deliberation on the part of those subject to collective decisions."<sup>4</sup> For liberals, Dryzek argues, that:

...a deliberative conception of democracy turns out to facilitate a more effective reconciliation of liberal and democratic principles—in connection, moreover, with the specifically constitutional aspects of liberalism long thought most resistant to democracy.<sup>5</sup>

Rawls, for example states that “a well-ordered constitutional democracy” should be “understood also as a deliberative democracy”.<sup>6</sup> Dworkin takes a similar position:

Genuine collective action requires interaction: If the people are to govern collectively...then they must deliberate together as individuals before they act collectively, and deliberation must centre on reasons for and against that collective action, so that citizens who lose on an issue can be satisfied that they had a chance to convince others and failed to do so, not merely that they have been outnumbered. Democracy cannot provide any genuine form of self-government if citizens are not able to speak to the community in a structure and climate that encourages attention to the merits of what they say.<sup>7</sup>

### **6.1.1. The Importance of Deliberation**

Democratic deliberation is, therefore, widely viewed as a condition for liberal legitimacy. But why is this the case?

“When a group of equal individuals are to make a decision on a matter that concerns them all and the initial distribution of opinion falls short of consensus, they can” says Jon Elster “go about it in three different ways: arguing, bargaining, and voting”.<sup>8</sup> It is possible to reach a decision “by using one of the three procedures, two of them in combination, or all three”.<sup>9</sup> This trichotomy reflects another: members’ preferences “are subject to three operations: aggregation, transformation, and misrepresentation”.<sup>10</sup> Aggregation corresponds to voting, transformation to deliberation, and misrepresentation to bargaining. Decision-making processes in liberal democracies reflect all three. Citizens and representatives discuss and vote and discussion may take the form of either bargaining or deliberation with many theorists differentiating the latter from the former by the aim and nature of the arguments offered. Deliberation is:

...a process of public discussion and debate in which citizens and their representatives,

going beyond mere self-interest and limited points of view, reflect on the general interest or on their common good.<sup>11</sup>

Deliberation is characterized by the possibility that individual preferences may, after and because of discussion, be changed to take account of the general interest or common good; bargaining, on the other hand, leaves initial preferences intact and is characterized by the manipulative use of discussion to achieve the desired end. Not all theorists make such a sharp distinction between deliberation and bargaining. Amy Gutmann and Dennis Thompson, for example, hold that “A deliberative perspective sometimes justifies bargaining, negotiation, force, and even violence”.<sup>12</sup> For them, deliberation and deliberative democracy simply mean “reasoning about politics”.<sup>13</sup>

The aggregation of preferences by majority vote as the hallmark of democracy has been subject to what is known as “the social choice critique”. Simply put, social choice theorists, the most prominent being Kenneth Arrow, “showed that it is impossible for any mechanism for the aggregation of individual preferences into collective choices to satisfy simultaneously five seemingly innocuous and undemanding criteria”.<sup>14</sup> The social choice critique of aggregation is, needless to say, subject to its own critique which I will not discuss.<sup>15</sup> Suffice it to say that discussion and deliberation—with or without norms of public reason—are put forward as a remedy for the loss of democratic legitimacy wrought by the social choice attack on aggregation.

Notwithstanding its recent prominence as one possible solution to the problem of democratic legitimacy wrought by the social choice critique of aggregation, deliberative democracy has venerable philosophical roots: Bohman traces these to Dewey and Arendt and further back to Rousseau and Aristotle; D’Agostino and Gaus find the roots of public reason in Hobbes and Kant; and Dryzek claims that “the deliberative turn” is rooted in both liberal constitutionalism and critical theory.<sup>16</sup> Contemporary proponents credit deliberation, usually without supporting empirical evidence, with a wide range of moral and epistemological virtues including: legitimization of the ultimate choice;

promoting a larger consensus; improving the intellectual and moral qualities of the participants; “superior” (however defined) decisions; innate desirability; etc.<sup>17</sup>

There are tensions between these claims to virtue, particularly between those which credit deliberation with normative benefits and those which highlight epistemological virtues.<sup>18</sup> Bohman, whom I will take as a representative proponent of deliberation, states the ultimate aim of deliberation as improving “political decision-making over aggregation, by making it possible to work out common ends and a fair system of social cooperation without presupposing an already existing social consensus”.<sup>19</sup> There are two generic reasons why deliberation might be valuable. The first is procedural: decisions are better, possess more democratic legitimacy, because of the procedure used to reach them. The second is epistemological: the decisions themselves and the reasons for them are better by some procedure-independent standard. Both Rawls and Habermas are arguably proponents of proceduralism which Bohman defines as follows:

As both a standard of legitimacy and a model for institutions, an ideal procedure is useful in making the normative features of consensus explicit; reasoning in a procedure that embodies norms of freedom, equality and publicity would produce (under further ideal conditions of full information, absence of time constraints and so on) an outcome that everyone in principle could accept. By virtue of these ideal procedural conditions, the decision reached is fair and one that all could accept.<sup>20</sup>

On this view, which Bohman calls Ideal Proceduralism, there is no way to check the truth value or correctness of the ultimate decision or the reasons and reasoning used to reach it.<sup>21</sup> These “problems of justification” are ignored “by arguing that the proper ideal deliberative procedure is ‘constitutive’ of the correctness or legitimacy of a decision so long as certain conditions are met”.<sup>22</sup>

If one wants to stress the epistemological virtues of deliberation, ideal proceduralism is clearly deficient. Standards external to the procedure against which outcomes can be measured are required and “the issue becomes the reliability of a procedure (given some independent standard);” consequently “deliberation has only instrumental value relative to specific moral or epistemic ends,

such as fairness or reliability”.<sup>23</sup> Thomas Christian, for example, concludes:

**Given the fact of persistent disagreement on political matters, political justification cannot be seen by the members of an association to be merely a function of the ideal deliberative procedure. Each member...must be participating in deliberation with the view that his or her own approach is politically justified...citizens will end up presumably with views that they regard as politically justified and that the others...do not regard as politically justified. [Therefore]...each member must think that the ideal procedure does not produce outcomes that are politically justified to each of its members, and each member must be thinking of what is politically justified in terms of standards that are independent of the ideal procedure and understands that everyone else is thinking in the same terms.<sup>24</sup>**

This issue—whether or not the legitimacy of a decision is established by a fair procedure or by its correspondence with independent standards—is recast by Gutman and Thompson as a point of dispute between proceduralism and constitutionalism:

**Procedural and constitutional democrats agree that the disagreement turns on the question whether democratic procedures have priority over just outcomes or just outcomes have priority over democratic procedures.<sup>25</sup>**

They argue the deliberative democracy is, in fact, a way of surpassing the dichotomy, arguing that:

**...neither the principles that define the process of deliberation nor the principles that constitute its conduct have priority...Both interact dynamically in ways that overcome the dichotomy between procedure and outcome.<sup>26</sup>**

Democratic procedures must, they argue, incorporate and express the substantive values of political equality and moral respect if it is to confer legitimacy.

Gutmann’s and Thompson’s view is simultaneously a “cop-out” and quite likely a variant at least of the best possible answer. It is a “cop-out” because it does not address the means by which the substantive principles are independently justified or different interpretations of the principles are selected. Frank I. Michelman summarizes this problem as one of infinite regress:

**On the epistemic-democratic reading of the commitment to deep democracy, right reasoning about the right in politics is unrestrictedly bound to an adequately or properly democratic process. But the question of what *is* (for this purpose) an adequate or proper process is one that must fall under right reason’s jurisdiction. Where but to right reason should we look for an answer? Doesn’t some philosopher**

finally have to step forward to take responsibility here as a putative fundamental lawgiver?<sup>27</sup>

Gutmann and Thompson are therefore correct given that we cannot (and need not) justify everything all the time. Most debate and discussion in contemporary liberal democracies involves issues which do not, on the surface at least, call fundamental principles into question; and when an issue does involve questioning a fundamental concept, or the conception currently in vogue, the resolution to this too would have to be sought in deliberation. In any particular debate it is not necessary that “the standards [be] independent of any possible procedure, but only that they [be] independent (logically) of the actual procedure that gave rise to the outcome in question”.<sup>28</sup> For the remainder of my discussion I accept, therefore, as given that democratic debate is a necessary condition of democratic legitimacy for a variety of reasons that are both normative and epistemic in nature, that this dual rationale creates tensions and ambiguities, and that these are not resolvable. It is, in other words, very possible that an ideal democratic procedure, however defined, produces an outcome (a policy decision) which, while normatively legitimate by virtue of the procedure, fails the test of epistemic rationality because it is a bad decision by some independent standard (of justice, for example). Democracy, even ‘perfect’ democracy, is, as we all know, the worst of all systems except for all the rest; and deliberation and debate aid in making it the ‘least worse’ system of government.

### **6.1.2. Fora and Participants**

The question of the appropriate fora for deliberation and the related question of the appropriate participants are also subject to much discussion. Notwithstanding arguments put forward by proponents of the virtues of direct democracy and extensive participation, the nexus between the reasons and opinions of the public and ultimate political action by the state remains voting for representatives. Joseph M. Bessette summarizes this link:

**Deliberative democracy...demands...that the representatives of the people share the**

basic values and goals of their constituents; their own deliberations about public policy must be firmly rooted in popular interests and inclinations. The electoral connection is the chief mechanism for ensuring such a linkage between the values and goals of representatives and represented. If that linkage is sufficiently strong, then the policies fashioned by political leaders will effectively be those that the people themselves would have chosen had they possessed the same knowledge and experience as their representatives and devoted the same amount of time considering the information and arguments presented in the national councils.<sup>29</sup>

One's position on fora for, and postulated participants in, democratic debate largely depends upon which side of the voting nexus one wishes to stress.

There are those who argue that deliberation draws its moral and epistemological force from citizen debate outside the formal political structures of the state. According to Moishe Postone  
Habermas, a leading theorist of debate in "the public sphere", holds:

...that an essential condition of democracy in large-scale industrial capitalist societies is the existence of a functioning public sphere, that is, a sphere at the intersection of political and social life, outside of the formal state apparatus, yet not immediately identical with civil society; it is constituted by citizens engaged in critical public debates. In a society characterized by a functioning public sphere, public opinion in the course of such debates influences the formal governmental apparatus. Within this framework, public opinion is not simply the aggregation of individual givens as revealed by market research or opinion polls but is actively created by people.<sup>30</sup>

While this view neither ignores nor denigrates the value of deliberation within the formal political structure, it sees legitimacy as founded on public opinion generated in a properly functioning public sphere. Habermas summarizes the point as follows:

...the procedures and communicative presuppositions of democratic opinion- and will-formation function as the most important sluices for the discursive rationalization of the decisions of an administration bound by law and statute.<sup>31</sup>

It is, of course, "only the political system that can 'act'", but its actions must be tied to appropriately generated public opinion.<sup>32</sup> Gutmann and Thompson also see democratic deliberation as something that applies outside of governmental institutions as well as within the state structure. "Deliberation" they say "should be part of the fabric of political life throughout government and in public life

generally”, and if they give prominence in their arguments to governmental debates this is only “because they are more often on the record”.<sup>33</sup>

Rawls, on the other hand, focuses his arguments on what he calls “the public political form”:

It is imperative to realize that the idea of public reason does not apply to all discussions of fundamental questions, but only to discussions of those questions in what I refer to as the public political forum. This forum may be divided into three parts: the discourse of judges in their decisions, and especially of the judges of a supreme court; the discourse of governmental officials especially chief executives and legislators; and finally, the discourse of candidates for public office and their campaign managers, especially in their public oratory, party platforms, and political statements.<sup>34</sup>

Citizens should also conform to the norms of Rawlsian public reason when they are deliberating (presumably alone or in company) on fundamental questions of justice:

...ideally citizens are to think of themselves as *if* they were legislators and ask themselves what statutes, supported by what reasons satisfying the criterion of reciprocity, they would think it most reasonable to enact.<sup>35</sup>

In the same way that Habermas, while focussing on the importance of debate in the public sphere does not argue against the importance of debate within public institutions, Rawls, while stressing that norms of public reason should largely apply to institutional debates, in no way argues against vigorous debate in the broader “background culture”; he simply does not think that his norms of public reason apply to such debates:

Distinct and separate from...[the]...three-part public forum [in which the norms of public reason apply] is what I call the background culture. This is the culture of civil society. In a democracy, this culture is not, of course, guided by any one central idea or principle whether political or religious...The idea of public reason does not apply to the background culture with its many forms of nonpublic reason nor to media of any kind.<sup>36</sup>

It is not my intention to take a position on any of the above issues. I conclude from my overview simply that deliberation is, for various reason, widely seen as an integral part of a liberal democracy. It should and does take place at various levels and in the various institutions of society, both inside and outside of the formal political structure. In my discussions of the role of consensus,

the value of limiting the nature and types of arguments that should enter into debate, and the impact of cultural recognition, I will offer general arguments that have, I believe, general relevance for the various levels of democratic discourse.

## **6.2. The Chimera of Consensus**<sup>37</sup>

Gray argues that “Liberalism contains two philosophies” one of which sees “toleration” as justified “as a means to truth”:

...toleration is an instrument of rational consensus, and a diversity of ways of life is endured in the faith that it is destined to disappear.<sup>38</sup>

On this view, values will ultimately converge. Another liberal view argues that:

...toleration is valued as a condition of peace, and divergent ways of living are welcomed as marks of diversity in the good life.<sup>39</sup>

The first position “supports an ideal of ultimate convergence on values” while the second looks only for a “*modus vivendi*”.<sup>40</sup> To have a *modus vivendi*, “to live together in peace”, common values are not necessary; what is necessary are “common institutions in which many forms of life can coexist”.<sup>41</sup> Gray argues that the denigration of a “mere *modus vivendi*” represents a failure to absorb the lessons of Berlin’s value pluralism. Pushing the argument to the limit, Gray argues that the separation of the right from the good and the priority of the former over the latter characteristic of much liberal doctrine, including that of Rawls and Habermas, is untenable. Consequently, the idea that a state can instantiate neutral principles of justice is untenable (although Gray himself talks about rights based on human needs which are universal in scope); no consensus on constitutional basics, or anything else, is possible. It is not necessary to accept Gray’s (Berlin’s) metaphysical thesis of value pluralism or to deny the possibility of conceptually separating the right from the good to question both the possibility and the value of political consensus. In what follows, I will not explicitly question the justice paradigm. Even from within the paradigm, however, there is sufficient indeterminacy as to where the

right leaves off and the good begins, sufficient room for disagreement as to the best conception of such concepts as equality and liberty, and sufficient room for conflict between various rights and liberties to question both the practicality of consensus and its value as an ideal. This is particularly the case when culture is considered to be an important but 'non-trumping' individual interest.

In the previous section of this chapter I argued that debates about deliberation and public reason are characterized by a divide between theorists such as Rawls who stress debate in the formal institutions of the state and those such as Habermas who focus on debate in society at large. And yet both have in common the ideal of a rational consensus on political issues and disdain for the "mere modus vivendi". Rawls argues that a modus vivendi exists "when we think of social consensus founded on self- or group interests, or on the outcome of political bargaining"; in these circumstances, "social unity is only apparent, as its stability is contingent on circumstances remaining such as not to upset the fortunate convergence of interests."<sup>42</sup> The "overlapping consensus" that Rawls aims for "is quite different from a modus vivendi" in that "first, the object of consensus, the political conception of justice, is itself a moral conception" and "second it is affirmed on moral grounds" in that "it includes conceptions of society and of citizens as persons, as well as principles of justice, and an account of the political virtues through which these principles are embodied in human character and expressed in public life".<sup>43</sup> The content and structure of the overlapping consensus are arrived at by way of a "hypothetical and nonhistorical" agreement achieved in Rawls's famous initial position:

...the agreement in the original position represents the outcome of a rational process of deliberation under ideal and nonhistorical conditions that express certain reasonable constraints...the outcome cannot be ascertained by pure procedural justice and realized by deliberations of the parties on some actual occasion..[it] ...must be determined by reasoning analogically...that is, the original position is to be characterized with sufficient exactness so that it is possible to work out from the nature of the parties and the situation they confront which conception of justice is favoured by the balance of reasons. The content of justice must be discovered by reason: that is, by solving the

agreement problem posed by the original position.<sup>44</sup>

When political debate over the basic structure is visualized in this way, consensus is not only desirable, it is inevitable. If the deliberations are motivated by the right (public) reasons, the (uniquely possible) result is a given.

Habermas expresses some reservations with Rawls's approach.<sup>45</sup> He contends that Rawls's search for a "consensus on principles of justice that is neutral with respect to world views is required in view of religious and cultural pluralism," but it cannot avoid contentious philosophical issues through the construction of a freestanding political theory:

A theory that aims even to foster such a consensus must certainly be "political and not metaphysical" in this sense, but it does not follow that political theory can itself move entirely within the domain of the political and steer clear of stubborn philosophical controversies.<sup>46</sup>

Habermas contends that his approach is superior because "it focuses exclusively on the procedural aspects of the public use of reason"; hence "it can leave more questions open because it intrusts more to the *process* of rational opinion- and will-formation."<sup>47</sup> Consensus remains the goal and "the philosophical enterprise is institutionally framed in terms of a cooperative search for *the* truth."<sup>48</sup> Chantal Mouffe concludes from the exchange between Rawls and Habermas that "both are right in their respective criticisms" in that "Rawls's conception is not as independent of comprehensive views as he believes, and Habermas cannot be as purely proceduralist as he claims".<sup>49</sup> What motivates this ideal of consensus, given that such a consensus has never existed, does not now exist, and, contrary to Rawls and Habermas, doesn't seem likely to exist? Mouffe argues, and I agree, that, given the fact of pluralism, both Habermas, Rawls and others are trying to circumscribe "a domain that would not be subject to the pluralism of values and where a consensus without exclusion could be established".<sup>50</sup> It may be, however, that understandable as the ideal is, it fails to take the fact of pluralism sufficiently seriously.

The ideal of a rational moral consensus is thus widely shared, and it is understood to be a consensus based not on shared self-interest which would be a “mere modus vivendi”, but on moral values and perhaps even on identical moral values.<sup>51</sup> There are two distinct approaches to the public reasons which should ideally underlie a rational consensus: empirical and normative. On the purely empirical view, “R is a public reason only if, in each person’s actual scheme of reasoning, R is a reason” which is to say that “the publicness of a reason is determined by consulting the actual beliefs and desires of members of the public”.<sup>52</sup> This view does not question “the individual’s actual ways of reasoning, however defective they might be”.<sup>53</sup> From the empirical perspective, if the ultimate goal is a political consensus motivated by (moral and perhaps identical) public reasons, the reasons must be ones that do, in actual fact, motivate citizens. Given the widely documented failings of human reasoning, and despite the “transformative” effect of deliberation often argued for, the problem of a purely empirical approach is obvious: it mandates the acceptance of actual reasons, regardless of their reasonableness or rationality. Consensus on this basis is unattainable. Hence we have the more “Kantian” or “normative” conception which holds that:

A reason is a genuine public reason if it is a reason that would be embraced by every member of the public *if they reasoned well*...R is a public reason if..it is endorsed by the beliefs and desires that every individual would have if they met a condition C, where C identifies some idealized rationality condition.<sup>54</sup>

The chief objection to the normative view is that it “seems to abandon an important guiding principle of justificationist accounts of legitimacy...their responsiveness to broadly voluntaristic considerations”.<sup>55</sup> The normative view thus substitutes criteria imposed from outside the process of public reasoning for the actual reasons held by citizens in order to rule out results which are predetermined to be unacceptable. Advocates of consensus by public reasoning are often ambiguous about this problem. Rawls, for example, clearly hopes for a consensus arrived at by the actual reasoning of citizens; he stresses the use of noncontroversial science and the processes of ordinary

common-sense reasoning. On the other hand, he rules out as illegitimate reasons explicitly based on comprehensive views which really do motivate the political choices of citizens; and his consensus is ultimately assured by way of the counterfactual initial position. Adopting a normative position ultimately expresses a mistrust and dislike of politics and political debate as such; the normative position wants to determine the winner before the contest begins.

Nevertheless, a public reason is one which is (on the empirical account, or should be on the normative account) 'accepted by every member of the public'. But do the reasons that a public reasons is acceptable to every member of the public have to be identical? Again there are several positions on the matter. At one extreme, citizens may support a consensus for strictly prudential reasons; the result would be the widely denigrated "mere modus vivendi". Alternatively, there could be a consensus based on non-prudential but different moral reasons. And, at the other end of the continuum from the modus vivendi, there is the idea of a consensus based on identical moral reasons; this consensus would amount to the discovery (or construction) of the "common good", the "general will" of Rousseau if you will. Gray's "common institutions in which many forms of life can coexist" is an example of the first position.

Rawls's position would appear to fall in the middle. The "overlapping consensus" on political justice is he argues "quite different from a modus vivendi":

first, the object of consensus, the political conception of justice is itself a moral conception. And second, it is affirmed on moral grounds, that is, it includes conceptions of society and of citizens as persons, as well as principles of justice, and an account of the political virtues through which those principles are embodied in human character and expressed in public life.<sup>56</sup>

On the other hand, those affirming the consensus do so for different moral reasons:

All those who affirm the political conception start from within their own comprehensive view and draw on the religious, philosophical and moral grounds it provides. [But] The fact that people affirm the same political conception on these grounds does not make their affirming it any less religious, philosophical, or moral, as

the case may be, since the grounds sincerely held determine the nature of their affirmation.<sup>57</sup>

A Kantian, a Christian (of whatever stripe), a Utilitarian and a Buddhist will, that is, affirm the consensus for different, but nonetheless moral, reasons. Rawls sees this moral foundation of the consensus as the essential ground for the stability of the just state:

This [the moral basis of the consensus] means that those who affirm the various views supporting the political consensus will not withdraw their support of it should the relative strength of their view in society increase and eventually become dominant...Each [different comprehensive view] supports the political conception for its own sake, or on its own merits. The test for this is whether the consensus is stable with respect to changes in the distribution of power among views. This feature of stability highlights a basic contrast between an overlapping consensus and a *modus vivendi*, the stability of which does depend on happenstance and a balance of relative forces.<sup>58</sup>

The claim for the superior stability of a consensus based on moral reasons is, of course, an unsupported empirical claim.

Many theorists take the stronger position which holds that for certain political questions there is an answer which constitutes the public good and that rational discourse at least opens the possibility of achieving a consensus on this answer. The consensus would be supported by all for the same reason—it represents the common good. Habermas, for example, holds that:

...if discourses...are the site where a rational will can take shape, then the legitimacy of law ultimately depends on a communicative arrangement: as participants in rational discourses, consociates under law must be able to examine whether a contested norm meets with, or could meet with, the agreement of all those possible affected.<sup>59</sup>

Only “those norms deserve to be valid that could meet with the approval of those potentially affected, insofar as the latter participate in rational discourses.”<sup>60</sup> Benhabib founds the consensus in terms of interests held by all in common:

The basis of legitimacy in democratic institutions is to be traced back to the presumption that the instances which claim obligatory power for themselves do so because their decisions represent an important standpoint said to be equally in the interests of all.<sup>61</sup>

A truly public reason must be fully shared. Gerald J. Postema puts the point as follows:

A public reason  $R^*$  is shared in the robust sense that  $R^*$  is a reason for each in virtue of its being a reason for all....[public reasons are]...not merely reasons that I ...find persuasive, nor reasons I believe you do or could find persuasive. They are reasons offered with the implicit claim to be reasons for us.<sup>62</sup>

It is evident, therefore, that rational consensus on political matters is the ideal of much thinking about deliberative democracy and public reasoning. This ideal assumes, among other things, that individuals are willing to and capable of abstracting their judgements and arguments from their own interests and preferences. Individuals are very probably capable of aiming at impartiality and willing to do so, but they are also capable, consciously or unconsciously, of cloaking their motives in the cloth of impartiality. Nino, attributing the point to Elster, argues that:

...any self-interested position can be concealed under apparently impartial normative propositions. For instance, in a wage dispute between trade unions and entrepreneur groups, the former will surely resort to egalitarian values, whereas the latter will allege libertarian ones.<sup>63</sup>

It is not necessary to impugn the integrity of either of the parties; the unionist may genuinely believe that his position is based purely on impartial values and the entrepreneur may believe that her position is not motivated by self-interest. Indeed it is probably the case, if one takes an unsystematic empirical view of the world, that many political positions which, from the exterior, clearly seem to reflect self-interest or ignoble motives are genuinely held for impartial or altruistic reasons. Once the pervasiveness of impartial motivation is questioned, however, not on the grounds that it is always absent or impossible, but on the grounds that it is intermittent and difficult to ascertain, the possibility of converging on an impartial 'common good' disappears. The proponents of the ideal do not claim that consensus should be the goal for each and every state act about which citizens deliberate. Broadly speaking, it applies when the debate concerns the fundamental structures of society and constitutional issues of justice; political issues are then to be debated and decided within the

constraints imposed by the ideal of consensus.

The ideal of consensus requires that while:

Participants in a communicative democratic interchange often begin with differences of culture, perspective, interest...the goal of discussion is to locate or create common interests that all can share. To arrive at the common good it may be necessary to work through differences, but difference itself is something to be transcended, because it is partial and divisive.<sup>64</sup>

This ideal is untenable in practice and undesirable in theory. "Taking pluralism seriously requires", as Mouffe argues "that we give up the dream of rational consensus which entails the fantasy that we could escape from our human form of life."<sup>65</sup> Citizens may well share an "adhesion to the ethico-political principles of liberal democracy" such as "liberty and equality". Nevertheless:

...we disagree concerning the meaning and implementation of these principles, and such a disagreement is not one that could be resolved through deliberation and rational discussion. Indeed, given the ineradicable pluralism of value [and culture], there is no rational resolution of the conflict.<sup>66</sup>

Ideals of justice and ideals of consensus, that is, may not be, in actually existing polities,

"compossible, i.e. possible together: the existence of one may preclude the existence of the other or even presuppose that the other does not exist."<sup>67</sup>

The problems with the ideal of consensus are exacerbated when the polity is characterized by cultural diversity. If one takes culture and cultural identity seriously, and if one regards a citizen as having an interest in her particular culture's prospects, the possibility and desirability of a political consensus becomes even more problematic. Proponents of rational consensus as the ideal are in thrall to Kant in that they stress the importance of the reason or motive that brings a citizen to adhere to the consensus. As I have noted elsewhere in this thesis, it is impossible for an observer to know the workings of another's mental states and hence impossible to even know for certain why the person supports a particular political position. Nor, Rawls notwithstanding, is it self-evident that the person's reasons make any significant empirical difference to the functionality or the durability of a consensus.

More importantly, as just discussed, the individual herself is, pace Kant, probably incapable of disentangling her psychological states in order to separate the impartial from the interested. This is more certainly the case when culture is conceptualized as an individual interest. How is one to separate oneself from one's culture in order to find an impartial motive for supporting a particular policy? We may not be 'constituted' by our culture in the strong sense, but we are all certainly influenced by it in many visible and invisible ways.

When the issue at hand is a particular demand for cultural affirmation or recognition, the issue as to whether or not there exists a 'right' to culture or cultural rights—that is, do demands for state actions to recognize and support culture constitute claims for rights and hence subject to the ideal of unanimity, or are they simply ordinary political expressions of preferences and interests? It is my position, set forth in Chapter 4, that the Affirmationists have presented no conclusive arguments in support of any general right to culture; cultural claims therefore are not claims of justice; they are political demands for the use of public resources and state coercion. About such issues no consensus is likely to be possible. The issue is, in B. Parekh's phrase, "who should bear the cost?"<sup>68</sup> In a debate about who should bear the costs and who should receive the benefits, any attempt to claim the status of a 'consensus' for any particular position is not likely to reflect the will of the minority or of the poor and powerless. When there are significant cultural differences in a society, and especially where such cultural differences track differences in economic well-being and political power, the ideal of consensus is, as Young persuasively argues, a possible instrument of majority control and domination:

**Assuming a discussion situation in which participants are differentiated by group-based culture and social position, and where some groups have greater symbolic or material privilege than others, appeals to a "common good" are likely to perpetuate such privilege...When discussion participants aim at unity, the appeal to a common good in which they are all supposed to leave behind their particular experience and interests, the perspectives of the privileged are likely to dominate the definition of that common good.<sup>69</sup>**

### **6.3. The Norms of Public Reason**

The ideal of a rational consensus about the public good leads directly to the view that certain justifications for state policies are illegitimate in a liberal democratic society. If consensus, particularly consensus supported by citizens for identical moral reasons, is the goal, certain kinds of reasons, private reasons which cannot be shared by all because they are based on particular comprehensive views, become normatively unacceptable in democratic debate. This view that private reasons have no public relevance can be traced to Hobbes:

The argument against making public claims based on private beliefs harks back to Thomas Hobbes. Hobbes argued that if a person received a revelation from God there was no reason for anyone else to believe him, so there was no way to verify that this was actually a revelation and not a dream or the result of an active imagination. Hobbes asked: "How can a man without supernatural revelation be assured of the revelation received by the declarer?" It is, Hobbes says, "evidently impossible.." <sup>70</sup>

Hobbes's aim was "to deny alternative sources of authority to the sovereign", <sup>71</sup> but his argument maintains its force if the goal is a rational consensus; private sources of truth cannot be shared in any public way. Kant's concept of public reason, very different from that of Hobbes in that it is oriented towards freedom of debate can also be interpreted as restricting the use of purely private reasons.

According to Onora O'Neill:

What is spoken or written cannot count as a public use of reason merely because it is noised or displayed or broadcast to the world at large. Communication has also to meet sufficient standards of rationality to be interpretable to audiences who share no other, rationally ungrounded, authorities...one who reasons publicly must address, and so be interpretable by, all others. <sup>72</sup>

Kant's position can be interpreted pragmatically; private reasons have no place in public debate because they are not efficacious. Certainly this is true if the goal of public debate is consensus.

In contemporary debate, Rawls is perhaps the preeminent proponent of the view that public reasoning demands public reasons. I will therefore focus primarily on his arguments in favour of what I argue is an undesirable and unworkable view of public reason. <sup>73</sup> Rawls's holds that in a pluralistic

society, a society embracing many comprehensive views, religions etc.:

**Citizens realize that they cannot reach agreement or even approach mutual understanding on the basis of their irreconcilable comprehensive doctrines. In view of this, they need to consider what kinds of reasons they may reasonably give one another when fundamental political questions are at stake. I propose that in public reason comprehensive doctrines of truth or right be replaced by an idea of the politically reasonable addressed to citizens as citizens.<sup>74</sup>**

Public reasons “is public in three ways”:

**as the reason of free and equal citizens, it is the reason of the public; its subject is the public good concerning questions of fundamental political justice, which questions are of two kinds, constitutional essentials and matters of basic justice; and its nature and content are public, being expressed in public reasoning by a family of reasonable conceptions of political justice reasonably thought to satisfy the criterion of reciprocity.<sup>75</sup>**

It is the third way in which public reason is public, the nature of acceptable public reasons, which is the focus of this section. Weithman summarizes, accurately I think, Rawls’s position:

**...a citizen arguing in the public forum when constitutional essentials are at stake should be prepared to show how her position can be supported by a reasonable balance of political values...The political is a realm of human affairs analytically distinguishable from the other realms of human life. Corresponding to that realm is a set of moral values that can be realized only by political institutions and in political relations among citizens...Political matters, or at least the most important of them, ought not be settled without appeal to values proper to the political realm...citizens should be expected to endorse a settlement of these values only if that settlement can be justified by appealing to a reasonable balance of political values. Citizens...should be prepared to show how the positions they publically advocate and vote for can be supported by such a balance.<sup>76</sup>**

Rawls’s position on the implications of the general principle for the arguments drawn from citizens’ (reasonable) comprehensive views in political debate has evolved.<sup>77</sup> His current position does not preclude their introduction into a debate about constitutional essentials “provided that in due course proper political reasons—and not reasons given solely by comprehensive doctrines—are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support”.<sup>78</sup> This “proviso” as Rawls calls it, separates Rawls’s position from others’ positions which

not only preclude the use of such arguments, but also rule out positions which, while articulated in the language of public reason, are in fact motivated by their holders' comprehensive beliefs.<sup>79</sup> Rawls also argues that the position that political argument must at some stage be supported by fully public political reasons implies that public reason "neither criticizes nor attacks any comprehensive doctrine, religious or nonreligious, except insofar as that doctrine is incompatible with the essentials of public reason and a democratic polity".<sup>80</sup>

Rawls's "conclusions about public reason turn crucially on his conception of citizenship" which, in turn, "he considers relational. To be a citizen is to stand in a certain relationship to others and to social institutions".<sup>81</sup> He states that:

The idea of public reason arises from a conception of democratic citizenship in a constitutional democracy. This fundamental political relation of citizenship has two special features: first, it is a relation of citizens with the basic structure of society...and second, it is a relation of free and equal citizens who exercise ultimate political power as a collective body.<sup>82</sup>

The organization of the basic structure of society "has deep and long-term social effects and in fundamental ways shape citizens' character and aims, the kinds of persons they are and aspire to be".<sup>83</sup> It has, in Weithman's words, "a profound and inescapable effect on each citizen's ability to develop and exercise her moral powers".<sup>84</sup> If citizens are to be viewed "as free and equal" in the governance of the basic structure which so profoundly effects them, they must "have an equal share in the corporate political and coercive power of society".<sup>85</sup> The issue for Rawls becomes:

By what ideals and principles, then, are citizens who share equally in ultimate political power to exercise that power so that each can reasonably justify his or her political decisions to everyone?<sup>86</sup>

Rawls's answer to his question is that citizens must offer reasons in support of their policy prescriptions for society's basic structure that they honestly believe other citizens can find reasonable:

Citizens are reasonable when, viewing one another as free and equal...they are prepared to offer one another fair terms of cooperation according to what they

consider the most reasonable conception of political justice...when those terms are proposed...those proposing them must also think it at least reasonable for others to accept them as free and equal citizens, and not as dominated or manipulated, or under the pressure of an inferior political or social position.<sup>87</sup>

The only reasons which meet this standard are public reasons, reasons the ultimate justification of which can be framed in terms independent of any particular comprehensive view (as well as in terms of that comprehensive view). In addition to this formulation of the principle of liberal legitimacy, Rawls also argues that any conception of deliberative democracy which postulates the alterability of initial preferences requires norms (although not necessarily precise norms) of public reason:

When citizens deliberate, they exchange views and debate their supporting reasons concerning public political questions. They suppose that their political opinions may be revised by discussion with other citizens; and therefore these opinions are not simply a fixed outcome of their existing private or nonpolitical interests. It is at this point that public reason is crucial, for it characterizes such citizens' reasoning concerning constitutional essentials and matters of basic justice.<sup>88</sup>

Hence, Rawls's justifications for norms of public reason—the liberal legitimacy principle and the need for such norms if democratic deliberation is to flourish—are both grounded in the overarching goal of a rational consensus about structural justice.

Before criticizing the Rawlsian view of public reason, it is useful to briefly review a position somewhat similar to that of Rawls which is not explicitly tied to the goal of rational consensus. Kent Greenawalt presents arguments as to why legislators should not utilize religious arguments (as opposed to secular ones) in public political debate.<sup>89</sup> Greenawalt does hold that a consensus about constitutional essentials would contribute to stability, if it were possible:

...even though a society might be moderately stable with widespread disagreement about the wisdom of basic constitutional arrangements, Rawls is correct that *if* agreement can be achieved on basic essentials, *if* some fundamental matters are taken off the agenda, that will [would?] *contribute to stability and coherence*.<sup>90</sup>

He is, however, very sceptical about the possibility of such a consensus beyond “general abstractions”.<sup>91</sup> For Greenawalt, Rawls's distinction between constitutional essentials, about which

consensus is normatively desirable and empirically possible, and the application of such essentials to actual situations, the stuff of politics about which consensus is neither likely or required, is untenable:

...first problem...involves discerning which issues are covered by constitutional essentials and which are not...second, more serious difficulty...concerns a frequent relation between constitutional essentials (and questions of basic justice) and other issues. Argument about constitutional essentials bears on the disposition of other issues.

Rawls...has not yet faced the extent to which interpretation of constitutional essentials infects ordinary political argument.<sup>92</sup>

Furthermore, it is his belief that “self-restraint about the use of religious or nonaccessible reasons is not part of a set of fundamental principles for liberal democracy”.<sup>93</sup> Nevertheless Greenawalt holds that judges and legislators should adhere to norms of public reason which exclude reliance on private comprehensive views.<sup>94</sup> If Greenawalt is not primarily motivated by a search for consensus, what is his rationale? He provides two reasons, the first of which is somewhat similar to the principle of liberal legitimacy:

When legislators speak on political issues, they represent all their constituents. Their explicit reliance on any controversial religions or comprehensive view would be inappropriate. If they argued in terms of reliance on comprehensive or nonaccessible grounds, the losers are likely to feel imposed upon in the sense of being excluded, even if the issue does not involve imposition, in the sense of burdening religious practice.<sup>95</sup>

Citizens “imposed upon” in this way may feel themselves to be “second class citizens”.<sup>96</sup> Greenawalt’s second reason for arguing that legislators at least should accept restrictions on their public reasoning is the pragmatic one of societal stability. Although he believes that the United States at least is not in any imminent danger of religious violence, the possibility of social divisiveness remains high:

...religious politics in the United States probably would not produce extensive outright violence, but we are still far from harmonious mutual respect and tolerance. Religious divisions are still very significant in many regions, and people are acutely conscious of whether they are in a majority or minority.<sup>97</sup>

Greenawalt’s reasons are thus, much like Rawls’s, even if they are not tied directly to the ideal of

rational consensus: to show some form of respect; to treat all citizens as equals, including holders of minority views; and to foster social harmony.<sup>98</sup>

The major objection to Rawls's (and to some extent Greenawalt's) position is that it does not take diversity seriously. Limiting public reason to reasons acceptable to liberals simply decides issues without taking account of opposing views. Rawls himself recognizes this objection. "It may be objected", he says "that the idea of public reason would unreasonably limit the topics and considerations available for public argument and debate".<sup>99</sup> One form of this objection "is to suppose that it mistakenly tries to settle political questions in advance".<sup>100</sup> To address this objection, Rawls reviews the historical American debate concerning the separation of church and state and the appropriateness of prayer in the public schools. He concludes that much of the late 18<sup>th</sup> century debate over religious establishments in Virginia was in fact conducted in political rather than religious terms; to the extent it was not, "many if not all of those arguments can be expressed in terms of the political values of public reason".<sup>101</sup> Similarly, he argues, the contemporary debate over prayer in the public schools *could* be conducted in purely political terms. These debates illustrate:

...that the idea of public reason is not a view about specific political institutions or policies. Rather it is a view about the kind of reason on which citizens are to test their political cases in making their political justifications to one another when they support laws and policies that invoke the coercive powers of government concerning fundamental political questions.<sup>102</sup>

Presumably, the implication we are meant to draw is that, in theory at least, debates about religious establishments and school prayer could go either way. It is at least conceivable that proponents of establishment and prayer could put forward political arguments about social stability, the need to control the heterodox (and socially dysfunctional) young, etc.

There are, however, difficulties with Rawls's arguments against the objection that norms of public reason unduly restrict or 'fix' the public agenda. These difficulties are overwhelming if one

rejects, as I do, the view that comprehensive views (including religious ones) and culture are free-standing non-overlapping concepts. I begin by discussing objections to Rawls's position put forward by religiously motivated thinkers and subsequently extend the discussion to take account of the overlap of culture and comprehensive views.

As Perry argues, Rawls's position appears, on the surface, to make a great deal of sense, both pragmatically and morally:

It seems quite uncontroversial that if a citizen can justify a political choice on the basis of premises, normative or nonnormative or both, that she believes other citizens reasonably could accept and that she is prepared to defend them as premises they could accept, she should do so. Strategically, she is much better off doing so than relying on premises she believes other citizens could not accept. Morally, ...she cultivates rather than subverts the bonds of political community...by relying on premises that in her view unite, or could unite, the citizenry rather than on premises that divide them.<sup>103</sup>

It is important to note the hypothetical element in the above citation: "if a citizen can...". There are often a variety of reasons, however, why a citizen may not be able to do this. Furthermore, there are strong arguments as to why she should not do it, even if she could.

The initial attractiveness of Rawls's position as to norms of public reason and liberal legitimacy is, to some extent at least, linked to the appeal of the liberal ideal of a democratic state neutral as to citizens' religious views. Policies advocated by religious or cultural groups often may conflict with the ideal of state neutrality, not just in symbolic and relatively harmless ways, but in ways which seriously impinge on the rights and freedoms of those who do not share the particular position. There are certainly good reasons to oppose such policies on their merits, that is to attempt to restrict the content of proposed legislation (with a constitutional separation of church and state, for example). But, as Wolterstorff asks:

...why should epistemological restraints be laid on a person *when the legislation advocated by that person does not violate the restraints on content?* What difference does it make what reasons citizens use in making their decisions and conducting their

debates, if the positions they advocate do not violate the Idea of liberal democracy.<sup>104</sup>

Wolterstorff argues that not only are there no valid reasons for such restraints, they are a violation of democratic equality. His argument, which contrasts religious and secular motivations, is that religious citizens are denied equal opportunity to present their views as they see fit.<sup>105</sup> This argument may not carry the same weight when the distinction in reasons is between political and those based solely on a particular comprehensive views; not all citizens are religious but all citizens are assumed to have some sort of comprehensive view and thus suffer from the same limitations on the nature of the acceptable arguments they may put forward. And, in a sense, this is true if one makes the (in my view questionable) assumption that everyone does in fact have an identifiable view. Wolterstorff argues, correctly, that in practice this is not usually the case:

Much if not most of the time we will be able to spot religious reasons from a mile away: references to God, to Jesus Christ, to the Torah, to the Christian Bible, to the Koran, are unmistakably religious. How am I to tell whether the utilitarianism or the nationalism of the person who argues his case along utilitarian or nationalist lines is or is not part of his comprehensive perspective.<sup>106</sup>

The argument becomes more compelling if one abandons the idea that culture and comprehensive views are independent concepts. Individuals, most individuals, are unlikely to be capable of articulating reasons which do not reflect their cultural background which in turn may contain religious elements of which they are not even consciously aware.<sup>107</sup>

Weinstock cogently argues that doctrines of public reason which require citizens to identify the sources of their moral and political beliefs and ignore them in a futile chase for consensus is not a response to pluralism but an avoidance of its existence:

By insisting upon the further, stronger substantive constraint of reciprocity, deliberative democrats make it more likely that democratic practices, as they imagine them will be able to fulfill liberalism's justificatory premise. By limiting citizens and their representatives to reasons that could in principle be shared by others, they defuse the threat of moral pluralism. Those aspects of our moral and philosophical beliefs that are unlikely to be shared by others are left conveniently in the antechamber of

democratic deliberation, and our debates are structured according to terms that make it more likely that consensus will arise.<sup>108</sup>

The ideal of reciprocity has the effect of requiring citizens to be (publically) neutral as to the worth and value of other citizens' comprehensive views. Rawls, as we saw above, makes such citizen neutrality mandatory when he rules criticism of comprehensive views unacceptable to public reason. The view that the state must "respect" all comprehensive views and cultures equally has been extended to the individual citizen. As I argued in Chapter 4, there is good reason to be sceptical of the view that the state must positively respect cultures. The argument that individual citizens owe respect to other individual citizens and that such respect must take the form of not speaking in terms which they cannot accept is equally if not more implausible. On such an artificially constrained basis consensus may arise, but, as Weinstock argues, "the challenge of moral pluralism has been not so much addressed as circumvented..."<sup>109</sup> The assumption that citizens can or should "translate" any "reasonable" position into the political language of public reason is untenable. This may well be true for many people, particularly those whose outlook is more cosmopolitan, but for others, those deeply embedded in a cohesive culture or world view such a requirement will place them at a disadvantage:

It is clear that the requirement of reciprocity weighs more heavily upon citizens whose views are more tightly structured, and unless we simply state, in a question-begging manner, that such people are unreasonable, we must recognize that application of the norm of reciprocity will involve some unfairness.<sup>110</sup>

If deliberation is to play an epistemological and a legitimizing role by ensuring that on any particular issue all relevant points of view and perspectives present in a society are brought to the fore and given the consideration their pervasiveness in the society warrants, and by ensuring that this due consideration is seen to be the case, then any narrow view of public reason is defective. Recognition and acceptance of moral and cultural diversity requires the expansion of public debate, not its limitation.

The ultimate goal of democratic deliberation is a political decision about something of public importance; if the decision is to be perceived as legitimate, it must be seen as the result of a full and frank debate where all perspectives have had a chance to make their case. When a debate is constrained by rules seen by some participants as unfair, it cannot fulfill this role. The view that such limitations are appropriate is ultimately, as I argued above, underpinned by the idea that a morally based consensus is the ideal. Such a position leads to a view of public reason which will inevitably be viewed by many citizens as unfair. Furthermore, it may actually hinder the achievement of agreement on many issues by prohibiting individuals from putting forward the details of why they support a particular policy position. Proponents of restrictive public reason assume, implicitly or explicitly, that consensus can be reached by retreating, in the face of disagreement about issues to ever more abstract principles. In a culturally diverse society, however, it may well be the case that there are few such shared principles, or, alternatively, the principles are shared only at such a level of abstraction that any agreement based on them would have little or no concrete policy content.<sup>111</sup>

This position—public debate should be open to all points of view rather than restricted by norms of public reason which exclude arguments based on religious or philosophical conceptions of the good—may seem to contradict arguments in favour of a religiously (and culturally) neutral state. And there is indeed a certain, perhaps unresolvable, contradiction. As I have argued in this section, I do not believe restrictive norms of public reason to be either viable or desirable. I also argued, in Chapter 5, that state neutrality with regards to religion (and by extension culture) is both desirable and, within limits, viable, and hence should be the preferred liberal position. But if individuals should be free to argue their religious and cultural interests, interests not totally reducible to economic interests, will it not sometimes be the case that the resulting policy decision is non-neutral, both in consequences or justification or both? My response to this inevitability must be to fall back on

Gutmann's and Thompson's position, noted above, that not every principle must be reopened and questioned in every debate. The principle of state neutrality has been the subject of much discussion over many years, both in the literature of political theory and in actual political debate. This debate as to the value of the general principle has, in my view, concluded, correctly, that state neutrality is an important core liberal value. It is of course always possible for this debate to be re-opened and a different conclusion reached. Unless one holds to a Platonic view that moral and political values exist outside of and beyond the minds of those individuals who hold the values, this is always possible. What is at issue in most (but not all) public debate in liberal democratic societies is how neutrality is to be implemented and practised. It is my position that the 'best' way is the way I argue for here and in Chapter 7, the indifferent state; this conclusion is, of course, always subject to (democratic) debate.

#### **6.4. Culture Is A Public Reason**

Many versions of public reason fail to take diversity in all of its forms, including cultural, sufficiently seriously. As I argued above, this is true for the family of views, of which Rawls and Greenawalt may be considered examples, that have as their ultimate ideal a rational consensus about the common good. The ideal of a public consensus implies that reasons based solely on an individual's comprehensive or religious view, reasons, that is, which cannot be framed in neutral public language, have no place in the public square. The search for consensus is neither the sole nor the chief reason put forward by theorists who support this view. They generally argue from the principle of liberal legitimacy and the need to show respect to other citizens. Nevertheless, rational consensus as an ideal would make no sense at all if certain reasons were not rejected as unreasonable from the public perspective. A little discussed corollary of this view, explicitly put forward by Rawls, is that comprehensive views should, in turn, be exempt from public political criticism. If comprehensive views and culture are seen as overlapping concepts, this position parallels that of Affirmationists who

hold that individuals have a right to culture. On this view culture, as a right, serves as a trump which would effectively eliminate public debate about the merits of any political position which can be seen as linked to such a right.

This restrictive view of public reason has come under attack primarily from the those who argue that it unfairly privileges secular or non-religious views. Weinstock extended this critique with the argument that limitations on public reason disadvantage not just the religious citizen, but any citizen “whose views are more tightly structured”. The critiques themselves accept, as an unspoken assumption, the idea that comprehensive views, religious or secular, are, conceptually at least, completely distinct from an individual’s ‘culture’; a person has a comprehensive view and has (or *is constituted by*) a particular culture; and one need not consider the one when discussing the other. This view is, as I argued in Chapter 5, simply inconsistent with reality. In the real world the two things are intrinsically intertwined and inseparable.

Such a view of public reason emasculates the concept; it turns public debate into a rarified intellectual exercise which can add little to the democratic process. If public debate is to perform any legitimizing or epistemological functions, public reason must be interpreted in a broad manner. While in certain times and places there may be empirical reasons, reasons of social stability, why certain religious and cultural issues should be ‘off the table’, not subject to public debate or criticism, this is probably not the case in many contemporary liberal democracies such as Canada.<sup>112</sup> Consequently, individuals should feel free to put forward arguments which cannot be rephrased in a neutral public language. Similarly, individuals must expect that when their comprehensive view (religious or secular) or their culture has public policy implications, these too will be subject to public debate and criticism. The view that public reason should be open rather than restricted is most forcefully presented in contemporary philosophical debate by Young. I will refer to her arguments although,

her primary focus is on styles of debate rather than content. An open concept of public reason has implications for the principle of liberal legitimacy and for the question of language policy; both these issues will be address more fully in Chapter 7.

Young is alert to the possibility that some perspectives may find themselves shut out of democratic discussion: “Silencing some problem or experience” she argues “is an ever-present danger in communication, and no general rules or practices of discussion can ensure against it.”<sup>113</sup>

In diverse societies, the problems an individual faces and the experiences she has are very often the result of her cultural position; her perspective on problems and issues is also filtered through the prism of her comprehensive view. Young rejects the ideal of consensus on the grounds that in

situations characterized by diversity and social inequality “the idea of a common good or general interest can often serve as a means of exclusion.”<sup>114</sup> The search for unity is, moreover, “liable to

narrow the possible agenda for deliberation and thereby effectively silence some points of view”.<sup>115</sup>

She does not reject the idea that participants must be committed to the idea of agreement about how to address common problem. Such openness does not, however, have to imply that consensus is the ideal:

People can aim at agreement in the sense of being open to changing their positions as a result of discussion, however, without acceding to the claim that there is a single set of interests and order of goods to which they can all agree. Agreement is best reached when it is treated as a means of co-operation and of addressing collective problems which is situation-specific, thus not binding for further problems, and thus provisional and renewable. Agreement on ways of addressing specific problems, moreover, can leave intact differences of affiliation and perspective, and even give them prominence in discussion.<sup>116</sup>

Young argues that arguments and reasons that reflect a person’s situation and perspective are not illegitimate when introduced into democratic debate; they are rather a resource to be valued:

I argue that political claims asserted from the specificity of social group position, and which argue that the polity should attend to these social differences, often serve as a resource for rather than an obstruction of democratic communication that aims at

justice.<sup>117</sup>

She supports this position by arguing against the special normative worth of culture and identity made by Affirmationists such as Kymlicka, Taylor etc.:

Political theory would do well to disengage social group difference from a logic of identity, in two ways. First. We should conceptualize social groups according to a relational rather than a substantialist logic. Secondly, we should affirm that groups do not have identities as such, but rather that individuals construct their own identities on the basis of social group positioning.<sup>118</sup>

Young's position as to the value of culture is not identical to mine; nor is it probable that she would agree with my arguments as to the fallacies of the moral psychologies which underlie such claims. I would also argue that her stricture that participants must be committed to an agreement is unnecessarily strong; it retains a hint of consensus. Participants need only accept that a decision will at the end be taken by some form of majority voting, and that, as citizens of a democratic society who had the opportunity to have their views considered, they must (usually) abide by that decision, subject to the proviso that they remain free to attempt to reverse it. I do think, however, that Young's argument that difference, difference of all types, is a resource to be used by public reason and not a problem provides the key to a (not the) viable position on the relationship of culture and democratic debate.

Culture, including religion and comprehensive view, is important, to individuals. It strongly influences their prospects in a given society, and it often explains their perspective and position on various political issues. As I argued in Chapter 4, this does not imply that the individual needs or has a right to state affirmation of her culture. The ideal of consensus is unworkable and undesirable, for the reasons I elucidated above. Norms of public reason which attempt to limit the nature of acceptable public debate are also unworkable and not desirable for the reasons discussed. Difference, all difference, should, as Young argues, be considered a resource rather than a problem for

democratic deliberation. Taken together, these arguments lead to the conclusion that all reasons should be public reasons in the sense of their being acceptable in a democratic deliberation. If a person genuinely holds to a position because it is an integral part of her comprehensive view, she should put it forward as such rather than attempting to obfuscate it in any neutral language. Conversely, and contrary to Rawls, comprehensive views, to the extent they have public policy applications, must be subject to criticism in the public forum.

Inclusion of all points of view, and the reasons why citizens hold them, advances both the legitimizing and the epistemological value of public discussion. A political decision is not normatively legitimate if the process by which the decision has been made excludes significant perspectives present in a society. Young argues that on a deliberative conception of democracy “a democratic decision is normatively legitimate only if all those affected by it are included in the process of discussion and decision-making.”<sup>119</sup> One need not be a strong proponent of deliberative democracy, however, to hold that all points of view should be brought to the fore in the making of a political decision. Even under the aggregative model of democracy, the various preferences must be made known to decision-makers if they are to fairly aggregate them. The liberal principle of legitimacy, with its restrictive norms of public reason, would have the effect of excluding from political consideration many points of view or allowing their admission only if they are reframed in a way foreign to the thinking of those who hold them. We do not respect an individual, even in the weak sense of the term discussed in Chapter 4, by insisting that his or her position is, by some definition, unreasonable or inaccessible, and hence has no place in public debate. We take the individual seriously as an equal citizen when we are prepared to consider and criticise her reasons, both in our own terms and in hers. One may well think an individual’s position, and the reasons why she holds it, unreasonable if not downright stupid, while still respecting her right to hold and attempt to propagate the view. Reasons

based solely on a comprehensive view held only by a minority will not be efficacious in public debate, and citizens may choose not to use them. This, however, must be their choice. Politics is based on compromise, negotiation, conflict and strategic bargaining as well as reasoned argument. Individuals must decide which types of arguments best present their position and which are most likely to attract the support needed to bring about decisions they favour.

From the point of view of epistemological considerations, difference is, as Young argues, a resource. The idea that better decisions will result if more information about the issue is obtained has solid philosophical roots.<sup>120</sup> Decisions will be pragmatically better in that they are more likely to take account of all the relevant factors which will effect the actual (as opposed to the forecast) outcome of any given decision. They will also be better in the sense that they are more likely to reflect what citizens actually want to happen. This view is in many ways similar to Habermas's idea of an ideal speech situation. But, as I discussed above, Habermas is dedicated to the ideal of a rational consensus. It is not necessarily the case, however, that a consensus would arise even in the theoretical presence of all relevant information. If diversity is deep, consensus is probably impossible. Nevertheless, it still makes sense to argue that decisions resulting from an ideal speech situation would be better than those which don't. If an issue is to be considered from all perspectives, then all perspectives must have input into the process; and if more complete information leads to better decisions, then decision makers will not have all the necessary information if certain perspectives are not expressed.

An inclusive democratic debate in which all relevant perspectives are considered requires that citizens be free to present their positions and points of view as they best see fit. It also requires that other participants in the debate and the ultimate decision-makers are capable of understanding the points put forward. The position that all reasons, including cultural reasons, are public reasons may

seem extreme and is, of course, open to objection that it is a recipe for social conflict, and in some societies this may be true. Politics must take account of societal realities. In societies where religious and cultural divisions run so deep as to lead to violence, citizens would be advised to practice self-restraint. Indeed, legal restrictions on freedom of expression may, in extreme circumstances, be required. This is not, however, the case in most liberal democracies. While they may contain small elements of racists, bigots etc., the general society is sufficiently strong to deal with these fringe elements.

### Notes

1. My position is in Habermas's terms, therefore, that the democratic polity is founded on the willingness of citizens to deal with each other, at least some of the time, and about some fundamental issues in the manner of "communicative action" rather than in other ways—strategic bargaining, force etc.—that are open to them. "Communicative action" says Habermas "depends on the use of language oriented to mutual understanding. This use of language functions in such a way that the participants either agree on the validity claimed for their speech acts or identify points of disagreement, which they conjointly take into consideration in the course of future action." Jurgen Habermas, Between Facts and Norms 18. While the web of communicative action may well extend, in some circumstances, well beyond the border of a given political unit, and while other forms of social co-ordination may well mark large parts of social interaction within the political unit, it is nonetheless the case that there is a significant difference between "insiders" and "outsiders", and this difference forms the boundary of the legitimate democratic state. I would also argue that often activities within the political unit which seem to be driven by non-communicative modes of interaction—legal actions in particular—are in fact profoundly communicative in nature.

Mark Kingwell contrasts this view with the view that the human communities can or should be delineated by "picking our pre-existing essences or identifying clusters of in-groupers." They are instead "discursive achievements, processes of seeking and finding conversational partners and forging with them, painfully and by increments, the shared public institutions that will work for us." Mark Kingwell, The World We Want (Toronto, etc.: Viking, 2000), 22. The opposing view, human political communities presuppose, or should presuppose, "a pre-existing essence" is most commonly expressed as the view that something called 'the nation' is almost always "a tacit premise in almost all contemporary political thinking." Margaret Canovan, Nationhood and Political Theory (Cheltenham, U.K.; Brookfield, USA: Edward Elgar, 1996), 1. Michel Seymour makes the same point in "Présentation" to "Solidarité nationale et solidarité social," in Nationalité, Citoyenneté et Solidarité, ed. Michel Seymour (Montréal: Liber, 1999), 224: [if liberal political philosophers do not talk about nations it is "...seulement parce qu'ils tiennent pour acquis que le cadre idéal pour le projet libéral (au sens politique et non au sens économique de l'expression) est un cadre national."

I shall not address the sociological or philosophical issues concerning nations; I shall, as

indicated in the text, assume that political communities, whatever else they must be, must also be discursive communities.

2. For succinct summaries of the issues see John Dryzek, Deliberative Democracy and Beyond (Oxford: Oxford University Press, 2000), 7-8; Fred D'Agostino and Gerald F. Gaus, "Introduction," in Public Reason, ed. Fred D'Agostino and Gerald F. Gaus (Aldershot, Brookfield, Singapore, Sydney: Ashgate, Dartmouth, 1998), xi-xxii; Ricardo Blaug, "New Theories of Discursive Democracy," Philosophy & Social Criticism Vol. 22 No. 1 (1996): 49-80; and James Bohman, "The Coming of Age of Deliberative Democracy," Journal of Political Philosophy Vol. 6 No. 4 (1998): 400-423.

3. Dryzek, Deliberative Democracy and Beyond, v.

4. *Ibid.*, 1.

5. *Ibid.*, 10. Dryzek elaborates on this point in Chapter 1.

6. John Rawls, "The Idea of Public Reason Revisited" in Collected Papers, ed. Samuel Freeman, 574. Originally published in University of Chicago Law Review, 64 (Summer 1997): 765-807.

7. Ronald Dworkin, "Free Speech, Politics, and the Dimensions of Democracy" in Ronald Dworkin Sovereign Virtue (Cambridge and London: Harvard University Press, 2000), 364-365. Originally published in If Buckley Fell ed. E. Joshua Rosencrantz (New York: Century Foundation, 1999).

8. Jon Elster, "Introduction," in Deliberative Democracy, ed. Jon Elster (Cambridge: Cambridge University Press, 1998), 5.

9. *Ibid.*, 5.

10. *Ibid.*, 6.

11. James Bohman, Public Deliberation (Cambridge and London: The MIT Press, 1996), 4-5.

12. Amy Gutman and Dennis Thompson, Democracy and Disagreement (Cambridge and London: The Belknap Press of Harvard University Press, 1996), 4.

13. *Ibid.*, 2.

14. Dryzek, Deliberative Democracy and Beyond, 34. Dryzek, in chapter 2, provides a good summary of the social choice critique of democratic aggregation of preferences.

15. James Johnson, for example, argues: "The first thing to notice is that the "notorious difficulties" that follow from the work of Arrow and other social choice theorists for any assessment of aggregative arrangements diminish considerably if we relax or lift the requirement of unrestricted domain [one of Arrow's five criteria]...If we eliminate one of the conditions, we eliminate the impossibility, and, as a result, we eliminate a major basis for skepticism..." James Johnson, "Arguing for Deliberation," in Deliberative Democracy, ed. Jon Elster, 164.

16. Bohman, "The Coming of Age of Deliberative Democracy," 400; D'Agostino and Gaus "Introduction," xii-xv; Dryzek, Deliberative Democracy and Beyond, 8.

17. Elster "Introduction," 11. Regarding the validity of these claims, Johnson notes a certain hypocrisy amongst theorists who value deliberation: "...advocates of deliberation operate with something of a double standard. While they regularly invoke Arrow's "impossibility" result to expose the problems associated with aggregation mechanisms, they do not subject their preferred deliberative methods to similarly exacting standards. Instead of insisting that deliberative arrangements too must meet some stringing conditions of access analogous to "unrestricted domain", advocates of deliberation regularly...impose substantial prior constraints either on the behaviour of parties to deliberation or in the range of views admissible to relevant deliberative arenas." Johnson, "Arguing for Deliberation," 164. These advocates, that is, invoke norms of public reason.

18. Discussion follows Bohman "The Coming of Age of Deliberative Democracy" 401-407.

19. *Ibid.*, 402.

20. *Ibid.*, 402.

21. David Eastland, "Beyond Fairness and Deliberation," in Deliberative Democracy, ed. James Bohman and William Rehg (Cambridge and London: The MIT Press, 1997), distinguishes several variants of Proceduralism: "*Fair Proceduralism* [is] the view that what makes democratic decision legitimate is that they were produced by the fair procedure of majority rule." (176); "*Fair Deliberative Proceduralism*...insists that citizens ought to have an equal or at least fair chance to enter their arguments and reasons into the discussion before voting". (177); and "*Rational Deliberative Proceduralism*" which adds to Fair Deliberative Proceduralism the proviso that the procedure should value good reasons over less good reasons but still holds "that the only thing to be said for the outcomes is that they were produced by a reason recognizing procedure" (179).

22. Bohman, "The Coming of Age of Deliberative Democracy", 403.

23. *Ibid.*, 403.

24. Thomas Christiano "The Significance of Public Deliberation" in Deliberative Democracy, ed. Bohman and Rehg, 274-275.

25. Gutmann and Thompson, Democracy and Disagreement, 27.

26. *Ibid.*, 27. Carlos Santiago Nino also sees deliberation as reinforcing rather than competing with constitutionalism and individual rights: "By combining deliberative democracy with the dimensions of constitutionalism related to rights and the historical constitution, we can help constitution makers determine the most appropriate system of government and the division of power within it, the limits of participatory democracy vis a vis representation..etc." Carlos Santiago Nino, The Constitution of Deliberative Democracy (New Haven and London: Yale University Press, 1996), 12.

27. Frank I. Michelman, "How Can the People Ever Make the Laws," in Deliberative Democracy, ed. Bohman and Rehg, 162.

28. Eastland “Beyond Fairness and Deliberation”, 180.
29. Joseph M. Bessette, The Mild Voice of Reason (Chicago and London: The University of Chicago Press, 1994), 2. Cf James Bohman, “The Coming of Age of Deliberative Democracy”, 413: “Even if the deliberative idea favours decentralization and finding locations for direct democracy in large complex societies, it is not (at least in its feasible forms) inimical to all forms of voting or representation”.
30. Moishe Postone, “Political Theory and Historical Analysis,” in Habermas and the Public Sphere ed. Craig Calhoun (Cambridge and London: The MIT Press, 1992), 162.
31. Habermas, Between Facts and Norms, 300.
32. Ibid., 300.
33. Gutmann and Thompson, Democracy and Disagreement, 6.
34. Rawls “The Idea of Public Reason Revisited” 575.
35. Ibid., 577.
36. Ibid., 576.
37. The New Shorter Oxford English Dictionary defines chimera as a “she-goat, monster, a fire-breathing monster with a lion’s head, a goat’s body, and a serpent’s tail...A grotesque monster represented in painting etc...A bogey, a horrible phantasm...A wild or fanciful conception [etc.]. I refer to consensus as a chimera rather than merely as a phantasm—defined as “an illusion, an appearance that has no reality; a figment of imagination’ an unreal or imaginary being [etc.]”—for reasons which will, I hope, be apparent.
38. John Gray, Two Faces of Liberalism (New York: The New Press, 2000), 105.
39. Ibid., 105.
40. Ibid., 105.
41. Ibid., 6.
42. John Rawls, Political Liberalism, 147.
43. Ibid., 147.
44. Ibid., 273-274.
45. See Jurgen Habermas, “Reconciliation Through the Public Use of Reason,” and “‘Reasonable’ versus ‘True,’” both in Jurgen Habermas, The Inclusion of the Other (Cambridge: The MIT Press, 1998), 49-73 and 75-101. For Rawls’s reply see John Rawls, “Reply to Habermas,” The Journal of Philosophy 92(3) (1995): 132-180.

- 46.Habermas, “‘Reasonable’ versus ‘True’”, 77.
- 47.Habermas, “Reconciliation Through the Public Use of Reason”, 72.
- 48.Habermas, “‘Reasonable’ versus ‘True’”, 77 (my emphasis). Rawls in response argues that Habermas’s approach is itself not strictly procedural and incorporates a substantive dimension. Rawls “Reply to Habermas”, 177-174.
- 49.Chantal Mouffe, The Democratic Paradox (London and New York: Verso, 2000), 91.
- 50.Ibid., 91.
- 51.Joshua Cohen, “Deliberation and Democratic Legitimacy” in Deliberative Democracy, ed. Bohman and Rehg, 75: “...ideal deliberation aims to arrive at a rationally motivated *consensus*—to find reasons that are persuasive to all who are committed to acting on the results of a free and reasoned assessment of alternatives by equals.”
- 52.D’Agostino and Gaus, “Introduction,” xiv.
- 53.Ibid., xiv.
- 54.Ibid., xiv.
- 55.Ibid., xv.
- 56.Rawls, Political Liberalism, 147.
- 57.Ibid., 147-148.
- 58.Ibid., 148.
- 59.Habermas, Between Facts and Norms, 103-104.
- 60.Ibid., 127.
- 61.Seyla Benhabib, “Toward a Deliberative Model of Democratic Legitimacy,” in Democracy and Difference, ed. Seyla Benhabib (Princeton: Princeton University Press, 1996), 69.
- 62.Gerald J. Postema, “Public Practical Reason: An Archeology,” in Public Reason, ed. D’Agostino and Gaus, 452, 456.
- 63.Nino, The Constitution of Deliberative Democracy, 123.
- 64.Iris Marion Young, “Communication and the Other: Beyond Deliberative Democracy”, 126.
- 65.Mouffe, The Democratic Paradox, 98.
- 66.Ibid., 102.

67. Waldron, "Cultural Identity and Civic Responsibility", 159, Note 5.
68. Bhikhu Parekh, "Equality, Fairness and Limits of Diversity", Innovation Vol. 7 No. 3 (1994): 292.
69. Young, "Communication and the Other: Beyond Deliberative Democracy", 126. Cf. Susan Bickford, The Dissonance of Democracy (Ithaca and London: Cornell University Press, 1996), 18.
70. Jeff Spinner-Halev, Surviving Diversity (Baltimore and London: The Johns Hopkins University Press, 2000), 158.
71. Ibid., 158.
72. Onora O'Neill, Constructions of Reason (Cambridge: Cambridge University Press, 1989), 35. For a discussion of the role that a search for a rationally grounded "source" of authority plays in Rawls's view of public reason see Nicholas Wolterstorff, "The Role of Religion in Decision and Discussion of Political Issues," in Robert Audi and Nicholas Wolterstorff, Religion in the Public Square (Lanham, Boulder, New York, London: Rowman & Littlefield Publishers, Inc., 1997), 67-120. See particularly 90-105. Wolterstorff argues that Rawls's source of authority is, at bottom, public opinion and that religious believers, who rely on "private" authority can never accept this.
73. My outline of Rawls's arguments follows that of Paul J. Weithman, a critic of Rawls's position. See Paul J. Weithman, "Citizenship and Public Reason," in Natural Law and Public Reason ed. Robert P. George and Christopher Wolfe (Washington: Georgetown University Press, 2000), 124-170, and "Introduction: Religion and the Liberalism of Reasoned Respect" in Religion and Contemporary Liberalism, ed. Weithman, 1-37. Rawls's (somewhat changing position) is set out in the following: Political Liberalism, Lecture VI; the "Introduction" to the paperback edition of Political Liberalism reprinted as "Postscript" to "The Idea of Public Reason," in Deliberative Democracy, ed. Bohman and Rehg, 131-141; "The Idea of Public Reason Revisited"; and his views as expressed in "Political Liberalism (Religion and Public Reason)," A symposium with Martha Minow, John Rawls, Michael Sandel, Ronald Theman and Cornel West, Religion and Values in Public Life Vol. 3 No. 4 (Summer 1995): 1-11.
74. Rawls, "The Idea of Public Reason Revisited", 574.
75. Ibid., 575.
76. Weithman, "Citizenship and Public Reason", 143-144.
77. For a succinct summary of the evolution see Ronald F. Thiemann's introductory comments in the symposium "Political Liberalism (Religion and Public Reason)", 1-2.
78. Rawls, "The Idea of Public Reason Revisited", 591.
79. Space precludes an explication of such stronger views. Given that I intend to argue that Rawls's position is itself unduly restrictive, the details of the more restrictive views can be largely ignored. Robert Audi is probably the foremost advocate of the view that citizens must be motivated by secular (non-religious) motives. See "The State, the Church and the Citizen," in Religion and Contemporary

Liberalism, ed. Weithman, 38-75; Audi and Wolterstorff, Religion in the Public Square (Lanham, Maryland: Rowman & Littlefield Publishers Inc., 1997); “The Separation of Church and State and the Obligations of Citizenship”, Philosophy and Public Affairs 18 no. 3 (Summer 1989): 259-96; and “Religious Commitment and Secular Reason: A Reply to Professor Weithman,” Philosophy and Public Affairs 20 No. 1 (1991): 66-76.

80. Rawls, “The Idea of Public Reason Revisited”, 574.

81. Weithman, “Citizenship and Public Reason”, 130.

82. Rawls, “The Idea of Public Reason Revisited”, 577.

83. Rawls, Political Liberalism, 68.

84. Weithman, “Citizenship and Public Reason”, 131.

85. Rawls, Political Liberalism, 61.

86. Rawls, “The Idea of Public Reason Revisited”, 578.

87. *Ibid.*, 578.

88. *Ibid.*, 580.

89. Greenawalt, Private Consciences and Public Reasons; and Religious Convictions and Political Choice (New York, Oxford: Oxford University Press, 1988). My discussion of Greenawalt is indebted to that of Perry, Religion and Politics, 49-54.

90. Greenawalt, Private Consciences and Public reasons, 113-114.

91. *Ibid.*, 114.

92. *Ibid.*, 118, 119.

93. *Ibid.*, 130.

94. *Ibid.*, 143, 157.

95. *Ibid.*, 157.

96. *Ibid.*, 132.

97. *Ibid.*, 157.

98. There are many other liberal theorists who support restrictive norms of public reason; again, space precludes a discussion of their views. The most prominent include: Bruce Ackerman, “Why Dialogue,” in Public Reason, ed. D’Agostino and Gauss, 25-42; Lawrence B. Solum, “Constructing an Ideal of Public Reason,” in Public Reason, ed. D’Agostino and Gauss, 343-376; Charles Larmore, “Political Liberalism,” and Pluralism and Reasonable Disagreement,” both in Larmore, The Morals

of Modernity, 121-151 and 152-174; Stephen Macedo, "The Politics of Justification." in Public Reason, ed. D'Agostino and Gauss, 377-401, and "Liberal Civic Education and Religious Fundamentalism: The Case of God v. John Rawls", 468-496; and Thomas Nagel, "Moral Conflict and Political Legitimacy," in Public Reason, ed. D'Agostino and Gauss, 199-224.

99. Rawls, "The Idea of Public Reason Revisited", 601.

100. *Ibid.*, 601.

101. *Ibid.*, 602.

102. *Ibid.*, 603.

103. Perry, Religion in Politics, 57.

104. Nicholas Wolterstaff, "The Role of Religion in Political Issues," in Audi and Wolterstaff, Religion in the Public Square, 77.

105. *Ibid.*, 77.

106. *Ibid.*, 105

107. See Jeremy Waldron, "Religious Contributions in Public Deliberation," San Diego Law Review Vol. 30:817 (1993): 817-848. In particular: "Our theories of basic rights, of property and justice, of the respect due to the human person, are all rooted historically in theories of natural law and in conceptions that were specifically theistic and, indeed, Christian in approach. We are not engaged in the business of developing ways of thinking about politics and justice that abandon that orientation." The process is by no means complete and "the idea that we can afford simply to *ignore* the contents of all religious conceptions of the person, the idea that we should abandon any hope of driving clues or intimations from those traditions as to how to construct a secular conception and how to relate it to other ideas about virtue, value, and duty...because those sources of clues are controversial...strikes me as the opposite of wisdom." 846 and 843.

108. Daniel M. Weinstock, "Saving Democracy From Deliberation" in Canadian Political Philosophy, ed. Ronald Beiner and Wayne Norman (Don Mills [Canada]: Oxford University Press, 2001), 83.

109. *Ibid.*, 83.

110. *Ibid.*, 84. This is a common objection made by those professing religious comprehensive views, but it applies to any deeply rooted cultural outlook. Weinstock differs from some theorists in holding that while ruling out of bounds references to comprehensive views unduly limits public debate, some restrictions should apply, namely that only "reasons as opposed to naked emotional appeals or unabashed expressions of individual or of group interest" are acceptable. Reasons, in turn, "must have certain logical properties, such as generality" (*Ibid.*, 82). Young, on the other hand, argues that even this limited restriction weighs unduly on the ability of the oppressed to have their point of view heard: "...by restricting their concept of democratic discussion narrowly to critical argument, most theorists of deliberative democracy assume a culturally based conception of discussion that tends to silence or devalue some people or groups." Young "Communication and the Other: Beyond Deliberative

Democracy”, 120. Beyond saying that I agree with Young on this point, but with the provision that there is no reason to think that the rich, educated and powerful won’t also have advantages in the use of other forms of discussion (greeting, story telling etc.), I cannot address this point.

111. Cass Sunstein’s idea of an “incompletely theorized agreement” is relevant here. As he argues “When we disagree on the relatively abstract, we can often find agreement by moving to lower levels of generality” and “...participants in a liberal legal culture often seek agreement on what to do rather than exactly how to think”. Cass Sunstein, Legal Reasoning and Political Conflict (New York, Oxford: Oxford University Press, 1996), 47, 48.

112. I am not speaking here of what in Canada and much of Western Europe is called ‘hate speech’. My own view is that legal restrictions on such speech are not necessary and probably counterproductive in Canada at least. It is not, however, my intent to argue for this position. It should be noted that one person’s hate speech is, on occasion, another person’s justified criticism. This is often the case, for example, in criticisms of the Roman Catholic Church’s position on abortion, gay rights, or the role of women in the church. What many people, myself included, often see as a legitimate criticism is characterized by others as “anti-Catholic hate speech”.

113. Young, Inclusion and Democracy, 37.

114. *Ibid.*, 43.

115. *Ibid.*, 43.

116. *Ibid.*, 43-44. Young, in a note to this passage, indicates that she takes this to be “the spirit behind Rawls’s notion of an ‘overlapping consensus’”. Given Rawls’s commitment to a rational consensus based on identical moral reasons discussed above, I am unable to understand how Young can take this view.

117. *Ibid.*, 82.

118. *Ibid.*, 82.

119. *Ibid.*, 23.

120. See *ibid.*, 31, note 24 for Young’s references. In addition see my “William James, Truth, and Contemporary Political Philosophy” *DePhilosophia*, Vol. XIV, No. 1: 63-74.

## **7.0. The Indifferent State and its Implications**

Chapter 2 sketched a view of what a policy stance of benign neglect towards culture is often thought to imply. It is usually interpreted as the state adopting a rigorous neutrality toward culture similar to that which should be adopted with regards to the religious and philosophical views of its citizens. Four liberal justifications outlined by Brighouse in support of such a policy were canvassed: the liberal principle of legitimacy; neutrality; autonomy; and equality. I argued that each of these justifications has merits, but none is free from difficulties of implementation and interpretation. Chapter 3 critiqued the arguments put forward by Affirmationist critics of benign neglect. Their criticisms, I argued, could be separated into two generic categories: those, made by Young and Phillips, which argue for the state affirmation of culture on the grounds that substantive discrimination exists and affirmation is the best way of remedying the situation; and those, made by Taylor, Kymlicka, Raz and Tamir, which justify suggested policies not primarily by claims of substantive discrimination, although this exists and should be overcome, but on the grounds that culture has special normative worth. My claim was that Affirmationists of the first variety can be accommodated by benign neglect as it would be practised in my yet to be theorized indifferent state, while those of the second category could not. Chapter 4 offered a critique of the moral psychologies of citizenship which underlie the arguments of the second group of Affirmationists, arguing that these claims, while not without certain merits, cannot be sustained in their strong form. Chapter 5 addressed the nature of the 'culture' that Affirmationists (of the second variety) wish to affirm and argued that it overlaps with, and is often similar to, religion and theories of the good. Chapter 5 also argued that neutrality towards religion is (imperfectly) possible and, furthermore, that any official affirmation of religion is tantamount to a restriction on religious liberty. The chapter closed with the issue of language and accepted the fact that language plays an important role in liberal democracy and cannot be assimilated

to the religious paradigm in the same way as other aspects of culture. Chapter 6 discussed the importance of democratic deliberation and the role of public reason. I concluded that narrow conceptions of public reason which wish to exclude from (some) public debate reasons based on theories of the good (and on my reasoning reasons based on culture) are untenable for a variety of reasons. I also concluded, however, that if culture is viewed in the manner of the second category of Affirmationists—as something with special normative value and hence giving rise to rights—the possibilities for vigorous democratic deliberation will be seriously constrained. Because many important issues of public policy involve the allocation of resources and also impact cultural concerns in various ways, positions which hold culture to give rise to special rights effectively remove many items from the public agenda.

It is now time to weave these diverse strands of argument together into a coherent whole. That whole is what I call the indifferent state—a state indifferent to its citizens' culture, religion or theory of the good, but a state strongly interested in inclusion, liberty, equality and opportunity. I argue that the rigorously neutral state, as traditionally offered by theorists of benign neglect, is what Nino, in a different context, refers to as “utopian in the bad sense—a dream that has no connection to reality” because, “given the empirical features of real contemporary societies, no possible institutional arrangements can satisfy the conditions necessary for its realization.”<sup>1</sup> If this is true, one is left with two possibilities: one can reinterpret the idea in the manner of the Affirmationists arguing that ‘true’ neutrality requires positively affirming all cultural difference (a position which is itself, in my view, utopian in the bad sense—i.e., impossible to realize given the concrete circumstances faced by contemporary societies); or one can accept the fact of empirical reality but try and retain an ideal of neutrality which achieves the degree of neutrality possible consistent with other liberal values. This second approach, what I refer to as that of “the indifferent state” would then be an example of

**“legitimate utopianism”:**

**Legitimate utopianism sets forth an ideal model of society that is perhaps unattainable but does not treat as equivalent all situations which do not fulfill the model. It orders those situations according to how far they are from satisfying the elements of that ideal model.<sup>2</sup>**

Even the less stringent ideals of the indifferent state face difficulties at the level of implementation, difficulties brought about by history, sociology and the other exigencies of empirical reality in contemporary societies. Nonetheless, it is an ideal which is not totally outside the realm of reason and hence can serve as a standard to measure actual government policy in a way that the more doctrinaire liberal state advocated by Brighthouse cannot.

The chapter is separated into two large sections. The first returns to the justifications offered for benign neglect in Chapter 2 and reviews and reinterprets them in light of the arguments made in subsequent chapters. The second takes up issues of policy and discusses how policy and the justification of policy would differ if the ideal were that of the indifferent state rather than either cultural affirmation or the neutral state as traditionally theorized. Three policy issues are discussed: the inclusion of cultural minorities in institutions of state as played out in the case of the Sikh turban and the Royal Canadian Mounted Police (RCMP); the issue of whether or not a state needs or should have (in the normative sense) an official language (or languages); and third the issue of degrees of autonomy for different groups or areas within the state. These discussions of policy implications will be, largely, stipulative in that I will stipulate an assumed fact situation which, while hopefully not counterfactual, will represent a (sometimes gross) simplification of reality rather than a detailed discussion of the actual issues.

### **7.1. From Benign Neglect to Indifference**

In the following sections I revisit each of the liberal justifications proposed by Brighthouse in support of benign neglect and outline my reservations in light of the issues raised in Chapters 3-6.

Rather than address issues in the order in which they were raised by Brighthouse, I discuss them in their relative order of importance.

### **7.1.1. Neutrality**

Five issues regarding neutrality were raised in my discussion of Brighthouse: who is to be neutral; about what are they to be neutral; why should they be neutral about it; should questions of neutrality be resolved in terms of justification or consequences; and should neutrality be interpreted as an all or nothing proposition or is more better than less even if perfection is unattainable. My analysis of these issues concluded that, both theoretically and practically, there is no unambiguous solution to the problems they raise; here, I outline the approach of the indifferent state and how it differs from that of a state guided by the strict neutrality of Brighthouse and from the approach implicit in Affirmationist thinking.

If we are to take seriously the possibility of legitimate utopianism, which is to say if we are to offer an ideal of neutrality which is not so far beyond the realm of possible instantiation as to render the ideal itself illegitimate, our analysis must be grounded in historical and sociological reality. The central difference between the view of neutrality I am offering and that put forward by Brighthouse (which, in turn, is the conception of neutrality which serves as the Affirmationists' 'straw man') is its grounding in and acceptance of the limitations imposed by the empirical situation faced by a given polity. The Canadian State, like other liberal democracies, has never claimed to be neutral towards language, culture and ethnic difference.<sup>3</sup> Prior to 1867, the franchise, the most visible symbol of citizenship and political participation was generally restricted to white adult males; even amongst this group there were religious and property restrictions.<sup>4</sup> First Nations have always been subject to difference-regarding legislation which varied between giving some acknowledgement to their unique status and attempting to force their assimilation.<sup>5</sup> The British North America Act (BNA Act) of 1867

is itself often interpreted as an explicit recognition of the importance of some, but not all, linguistic, religious and cultural groups and the need for this importance to be acknowledged in law and practice:

**A society is made up not simply of individuals, as the great social-contract theorists of the seventeenth century had imagined. An obvious fact about many societies is that they also consist of groups with distinctive ways of life. The Canadian constitutional settlement of 1867...responded to this fact...<sup>6</sup>**

While different interpretations are possible, there is no question that the settlement of 1867 was viewed by many as a way of protecting the French language and Catholic religion, primarily inside Quebec but also across Canada.<sup>7</sup> It is clear that:

**While not explicitly recognized in the B.N.A., the form of federalism was clearly adopted to accommodate regional demands for a degree of self-government...<sup>8</sup>**

Quebec was not the only region seeking self-government, but it was certainly a leader in this area. Confederation established a new polity, but not a polity characterized by its own nationality or citizenship; the BNA Act made no reference at all to citizenship; Canadians remained British subjects. The Act created what Georges Etienne Cartier referred to as a “political nationality”, a nationality which rejected the assimilation of groups.<sup>9</sup>

All groups did not, however, share equally in the political nationality; discrimination against immigrants and other minority individuals was rampant and there was little the federal government could have done, even if it had wanted to take action.<sup>10</sup> In a reading based on an empirical analysis of first ministers’ conferences, Gilles Bourque and Jules Duchastel concluded:

**La représentation identitaire au Canada jusqu’aux années trente se structure ainsi dans un espace discursif ethnociste et morale-religieux qui produit deux nationalismes exclusivistes et qui rend impossible la production d’une véritable identité canadienne.<sup>11</sup>**

With the depression of the 1930's, the economic development encouraged by participation in World War II, and the development of the modern welfare state, however, we, according to Bourque and

Duchastel:

...assiste alors à l'approfondissement de la nationalisation de la politique canadienne. Nous entendons par...[this]...la concentration et la centralisation de l'exercice du pouvoir dans les institutions de la sphère publique de l'Etat fédéral canadien.<sup>12</sup>

This transition included such measures as the 1931 Statute of Westminster which extended Canadian sovereignty to international affairs, the establishment of the Supreme Court of Canada as the final arbiter of Canadian law, the introduction of national welfare programs (unemployment insurance, family allowances and pensions for the elderly) and the creation of a Canadian citizenship distinct from British subjecthood in 1946. The post-war period also marked the decline of the British Empire as a world power. This tendency, according to Cairns, weakened the attachment of English speaking Canadians to the imperial connection and to the value of parliamentary government unconstrained by court enforced rights.<sup>13</sup> During this period (1950-1980) ideas of human rights were widely discussed. Both the civil rights movement in the United States and the various rights proposed by the United Nations contributed to this atmosphere. Individual rights came to the fore at the same time as the massive immigration of the 1950's and 1960's lessened the numerical dominance of the French and English.

The details of these developments, which culminated in the adoption of the 1982 Charter of Rights are too complicated to trace here.<sup>14</sup> Suffice it to say that the process did not mean the decline of group loyalties. Instead, the result is loosely what Cairns refers to as the “three-nations version of Canada”—Quebec, The ROC, and the First Nations—combined with a “ten-provinces, two-territories federal version” of government.<sup>15</sup> The Charter, as well as giving “abstract rights to all Canadians” also gives specific recognition to difference in the form of gender, ethnicity etc.<sup>16</sup> The result is a political culture which is complicated and ever changing. Large numbers of Aboriginals and a majority of Francophone Quebecers appear to give their prime loyalty to their own political institutions rather

than the Canadian state. Much of the ROC, on the other hand, has developed a strong attachment to the idea of a national government and to the Charter of Rights. This is not to say that the other groups are necessarily any less attached to individual rights; rather they see their own political structures as better equipped to implement them. They also see their own political structures as more representative of who they are.

Both historically and presently, the state was not and is not neutral with regard to language, culture, religion and ethnicity. While *The Charter* and various pieces of human rights and anti-discrimination legislation have as one of their aims to ensure equal—however defined—treatment of all, the reality is that life has been, is, and probably always will be, easier for members of cultural majorities or favoured minorities. It is not just that civil society will inevitably reflect the preferences and choices of the majority, but the actions of the state itself, a democratic institution subject to majority pressure, will also ultimately favour the beliefs and practices of the majority. I argued in Chapter 5 that the American experience with religious neutrality is an example of neutrality which, while by no means perfect, plays itself out in a process of reasoned debate. It is, however, clear that even in this instance a policy of neutrality favours large and powerful religious groups over small and isolated ones. Carter calls our attention to this fact:

...what we are bold to call neutrality means in practice that big religions win and small religions lose. When the Supreme Court decreed in *Lyng v. Northwest Indian Cemetery Protective Association* that three Indian tribes in California could not prevent the Forest Service from allowing road building and logging on their sacred lands, I suppose the justices believed they were acting neutrally: The tribes had no more right than anybody else to protect the lands. But from the point of view of the tribes whose religious tradition, as the justices admitted, would be “devastated” by the government’s action, there was nothing neutral about the destruction of the forest. With the forest gone, their religion also would be gone: a neutral result without any remotely neutral consequences.<sup>17</sup>

If this is true for a religious group in the United States which has constitutionally entrenched the ideal of free exercise and non-establishment of religion, how much more likely to be true for other non-

religious minorities or minorities in countries, such as Canada, where there is no constitutional ideal of neutrality? Members of minorities will inevitably face a choice between assimilating to the cultural norms of the majority or accepting life prospects unequal to those of the majority. In liberal market-oriented societies, as Spinner tells us, the pressure to assimilate will be overwhelming for most cultural minorities.<sup>18</sup> This will be so irrespective of the stance the state takes towards culture and ethnicity. With these considerations in mind, I now turn to the issue of neutrality itself and how it should be interpreted following an ideal of the indifferent state.

The first issue raised in my Chapter 2 discussion of neutrality was that of who or what is to be neutral. Liberals have, I argued, generally taken the position that it is the state and its agencies which are obligated to practice neutrality; the broader society, while subject in certain areas to non-discrimination laws, is not generally considered to have any obligation to be neutral in its religious or cultural orientation. As Stolzenberg argues, however, it is difficult to make a sharp distinction between the state and everything else. Indeed, the state may carry out many of its functions through non-state agencies and many activities of the state itself may be identical to those performed by civil society. The division of functions is different in different democratic societies, with some opting for a larger government role in society and some for less. It would be a strange result for most liberals (other than libertarians) if the problem of neutrality could be resolved by simply having the state retreat to a Nozickian minimal state.

We must distinguish between neutrality and equal treatment. The state must surely treat all of its citizens equally in whatever functions it undertakes; furthermore, it must enforce a similar policy on the major economic and social institutions of society. (The precise scope of “the major economic and social institutions” is, of course, subject to debate. Should it include major religious organizations, for example? Or should it apply to all rental property or should those renting rooms in

their homes be free to seek tenants with whom they are comfortable? Etc.) But is this also the case with regard to neutrality at the level of symbols or 'recognition'?

It is impossible that every cultural minority in Canada be symbolically recognized; it is also true that our national symbols, institutions and practices reflect elements of the dominant culture(s) and, to some extent, all the groups centred out for special attention in the *Charter*. A recent personal experience highlights this fact. I attended the service held every November 11 at the Cenotaph in Ottawa. The ceremony, organized and sponsored by the government of the Canadian state, included, among other things, Christian hymns, (vague) Christian references in the oratory, and the participation of representatives of some, but obviously not all, religions. It also included the playing of the Royal Anthem, a ditty which perhaps triggers pleasant memories for those of British descent but which probably evokes less favourable associations for many non-British immigrants, their descendants, citizens of French descent, and Aboriginals. On the other hand, the woman representing the Queen was herself an immigrant of non-British descent and Native veterans marched as a group using, I presume, symbols of their own culture. It goes without saying that such a ceremony violates neutrality as benign neglect traditionally conceived would have it. And, I would argue, that to some extent, the ceremony should perhaps tone down or eliminate superfluous cultural references and highlight shared political values—the defence of freedom, the struggle against tyranny, etc. It would, however, be impossible to have a ceremony which would mean anything to the main participants—the veterans—if all cultural references were removed. Those who fought in the two World Wars, did so under the British flag and, in part at least, out of loyalty to the Crown; many, perhaps most, also respond to the Christian imagery and music. And, as a perhaps dogmatic atheist, I was not offended by the imagery; indeed I responded—further evidence of the intertwining of culture and religion.

If the ideal is state indifference rather than rigorous neutrality the issue becomes one of

accommodating the legitimate preferences and desires of citizens while simultaneously not denigrating any cultural group. I argued in Chapter 4 that there is no valid reason to interpret respect as requiring positive affirmation of one's identity, nor are there compelling arguments to believe that there is serious psychological harm if such positive affirmation is not forthcoming from the state. While it is not acceptable for the state to display in actions, words or symbols its disparagement of any culture, there are no imperative reasons (beyond responding to citizens' desires) for a state to positively recognize or reinforce any one culture, minority or majority. It is inevitable, as I pointed out above, that the state will reflect in various ways the cultural hue of the majority tinged, perhaps, by that of significant minorities. If nothing is read into this fact except that it reflects empirical reality, there is no reason why minorities not reflected should interpret the situation as a denigration of their culture or way of life rather than simply as a fact of empirical reality. Needless to say, some will, but nothing will avoid this. This conception of neutrality offers no definitive answers as to what is and is not acceptable in any particular concrete situation. Clearly, if a state indulges in conscious selective recognition of some but not other minorities, this may, often legitimately, be interpreted as the state foregoing indifference for active (if negative) disparagement of the neglected groups. If the state, for example, announces days (weeks, years etc.) of recognition of some groups but not others, this will be seen as negative recognition of those left out. Furthermore, if the state maintains and promotes symbols which have a positive connotation for the majority (and I am assuming that only majority could impose its symbols in this way) but are viewed as symbols of oppression by a minority, this is also unacceptable. The use by the state of the Confederate Flag in the southern United States comes to mind in this regard. The possibility that this is also true for some Canadian symbols should not be discarded. The Union Jack and the Royal Anthem are for reasons noted above possible examples. Every state is the result of a long and complicated history of relations between minorities and

majorities. What is offensive and causes harm in a positive sense is the legacy of that history and differs from case to case. In summary, at the level of symbolism and recognition, it is foolish to deny that the state will reflect the majority, and it would be impossible to convey equal recognition to all minorities. The best that can be hoped for in a multicultural society is a state which, while it is strictly speaking indifferent to such matters, is, in practice, cognisant of the difficulties and responsive to them. The way the state (in practical terms the political decision-makers) is able to be aware of and respond to its citizens is by encouraging and promoting vigorous and open public debate in which minorities are fully represented and able to put forward, in their own way, their arguments and points of view.

Responsiveness requires that the state take cultural preferences into account, but also that its practices and policies weigh the wish of citizens to have their culture recognized and supported against the core political values of liberal democracy and against the beliefs and preferences other citizens. As I argued in Chapter 5, our experience with the legal treatment of religion argues that maximum religious liberty requires the non-establishment of any one religion or religions. If, as I also argued in Chapter 5, cultural claims are often religious in nature or similar to religious claims, there is no reason not to believe that the same holds for culture. This fact is perhaps most critical in that core area of state activity, the application of coercive force, the courts, the police, etc. To the extent the state presents a distinctive cultural face to the citizen when it is in its enforcement mode, there is good reason to fear that the citizen will not receive in fact, or at least not perceive herself, as receiving equal justice or enjoying equal liberty. I provide a concrete example of what I mean in the second section of this chapter.

The second issue for neutrality is, what it is the state is to be neutral about? In Chapter 2, I argued that Brighouse's view that the state should be neutral about language and culture because they

are simply preferences is untenable. The state cannot be neutral about all citizen preferences; it is the role of the democratic state to adjudicate among preferences; and it is the role of politics and democratic deliberation to provide for the expression of all points of view and to attempt to reconcile them to the extent possible before decisions about state actions are made. The actions will, however, favour some preferences over others. What the state should be neutral about is what philosophers have called theories of the good. My discussion in Chapter 5 provides arguments for the position that the concept of a theory of the good often overlaps with culture and that cultural claims are very often religious claims. Neutrality, as the ideal of the indifferent state, should also apply to what the Affirmationists call culture.

The third aspect of neutrality which requires clarification is its justification. Why should the state be neutral? It is unlikely that a completely neutral justification for neutrality is possible. As I discussed in Chapter 2, many liberals find the justification for state neutrality in specifically liberal values; values such as (internal) autonomy and freedom are seen as the ultimate underpinning of justifications for neutrality. This approach to justification is, however, problematic. Such values, by definition, do not appeal equally to individuals who profess other comprehensive views. Many religions, for example, make obedience to the will of God rather than autonomy the key foundational value. The alternative is to justify neutrality on the pragmatic ground that in deeply diverse societies it is the only policy which is capable of attracting support from the various cultures which compose society. The state which adopts the pragmatic justification for neutrality attempts to remain neutral as to culture on the grounds that for it to take a positive position would be to favour one group over another and that such an approach is likely to exacerbate rather than alleviate the problems inherent in pluralism. There are, of course, objections to this route to neutrality. Comprehensive liberals argue that it offers no arguments likely to convince those who hold illiberal views and want to impose their

particular views on the rest of society. And this objection is perfectly correct; it is also totally irrelevant. If an illiberal group were to control the coercive power of the state, there would be no philosophical arguments which would convince them not to impose their views; no arguments based on liberal values would serve to convince them. The only response which can be given to groups who wish to impose their views is the warning that they might one day lose power and have the views of others imposed on them. Neutrality is justified because it seems to provide the “nicest” society; a society in which individuals and groups can pursue their visions of the good without interference. (“Nicest” from the liberal point of view that is.) The justification is circular—we like the conclusion therefore we adopt the premises. The Affirmationists have performed useful work by bringing to our attention the empirical failures of governments to be truly indifferent to; whether we would like the likely result of their justificatory premises is, however, another question.

The fourth and perhaps central question which must be addressed is whether neutrality is to be addressed from the point of view of consequences or from the perspective of justification. Chapter 2 pointed out the problem with consequential neutrality: it is, from the practical point of view impossible; most state policies will impact individuals differently depending upon their cultural perspective. Justificatory neutrality, on the other hand, suffers from the difficulty in specifying exactly what constitutes a neutral justification. In a sense, consequential neutrality demands too much and justificatory neutrality gives too little. Very few policies can pass the test of consequential neutrality, but, as I argued in Chapter 6, it is almost always possible to provide a seemingly neutral justification for any particular policy. The neutrality of the indifferent state would, therefore, adopt neither approach as uniquely better.

I reject the argument that because consequential neutrality is fraught with difficulties and is, strictly speaking, impossible, differential impacts of state policies on different cultural groups can be

ignored or treated with 'benign neglect'. Indeed, it is in their analysis and description of the empirical impact of existing policies on cultural minorities that the Affirmationists have, in my view, given us their most valuable work. As I noted in Chapter 2, it is the substantial inequalities between individual members of different groups which drives the analysis of Young and Phillips. It is also true that, although dressed in the cloak of philosophical theory, it is in reality the empirical results of inequality and material deprivation which give the work of Tamir, Kymlicka and Raz its intuitive appeal to those of us who do not share their philosophical premises. Is the true force of Kymlicka's arguments for the preservation and promotion of Aboriginal cultures the questionable philosophical arguments for the special normative value of a tendentiously defined culture, or is it in reality the deplorable material circumstances which most Aboriginal Canadians face? It is all too easy for those belonging to the cultural majority to ignore the differential consequences of state action when that action consistently favours their way of life. If it is the circumstances—the consequences of state policies—which matter, would it not perhaps be better to address the issue from the perspective of consequential neutrality rather than from that of justification?

If my arguments in the preceding chapters have any merit, they at least call into question the philosophical premises developed by the Affirmationists to justify their arguments. My arguments do not, however, in any way detract from a recognition of the need to address the consequences faced by cultural minorities in our society. The existence of average substantive inequalities between individuals of different cultural backgrounds, as documented by the Affirmationists, has led some liberals to accept their arguments for recasting neutrality as equal affirmation of all cultures. Michael Ignatieff, for example, argues that there are only two possibilities: neutrality as traditionally theorized and equal affirmation for all:

**In responding to these criticisms [those of Kymlicka in particular], there are two ways for a liberal state to go: to reassert neutrality by ceasing to observe rituals and holidays**

specific to the dominant group, or to recast neutrality as the encouragement of all groups (that is to become multicultural).<sup>19</sup>

But this is a misreading of the realistic possibilities. It is true that there are only two feasible ways for a state to implement neutrality, but they are not the two put forward by Ignatieff and the Affirmationists. The real choice is between indifference, with all its failings, and selective affirmation: the state can attempt to be neutral in the sense of being indifferent to the cultural origins and practices of its citizens, or it can attempt to provide positive recognition and support to certain selected cultures. What it cannot do, in practice, is to provide equal positive recognition and support to citizens of every cultural group. This point is implicitly accepted by the Affirmationists themselves. While each Affirmationist adopts a somewhat different approach, all, implicitly or explicitly, select some cultures for support and recognition and some that are to be left to their own devices. Kymlicka, for example, argues for the positive recognition and support of national minorities but not for immigrant groups; and Taylor's views seem to support efforts of the Quebec state to promote the (local) majority French language and culture but say very little about what is to be done for other groups sharing the state. Given the multitude of different cultural identities which exist and given the fact that many individuals participate in various identities in to different degrees and in different ways, the Affirmationists are correct in assuming that state recognition and support is a limited resource which cannot be provided to all in equal amounts. They have, however, nothing to offer those individuals whose particular cultural identity fails to receive recognition.

The indifferent state would therefore adopt justificatory neutrality as merely the first part of a two-pronged test for neutrality. If a state policy were clearly justified by a desire to promote the culture of one particular group, it would be non-neutral and illegitimate in the eyes of the indifferent state. Neutrality from this perspective alone would not, however, render a policy legitimate for the indifferent state. Consequences matter; hence any policy which however neutral in intent clearly

disadvantages any particular cultural group would require further justification as to why this important fact is irrelevant. Even if every cultural group is to be accorded equal non-status, this does not mean that the state is indifferent to the welfare of the individuals belonging to different groups. If a policy or a series of policies has a consistently differential impact on different groups, this fact must matter and must be taken into account by the state in its decisions. I should note that there is nothing radically new about this approach in practice. It is the way many anti-discrimination laws function. If there are situations in which members of certain minorities do not appear to have received their 'fair share' of jobs, contracts etc., discrimination is assumed unless there is strong evidence to the contrary. What is new is my application of this piece of seemingly common sense reasoning to the philosophical issue of neutrality; political philosophers have been too intent upon theoretical consistency and rigour. The indifferent state would extend this reasoning beyond basic justice issues which are usually the focus of anti-discrimination laws to the broader range of policy issues such as workplace safety regulation, media policy etc.

The fifth and final question about neutrality raised in Chapter 2 was the issue of whether neutrality is an "all or nothing" concept or does it admit to degrees in its implementation. It is clear from the above discussion that the all or nothing approach is an example of illegitimate utopianism. The fact that perfect neutrality of either justification or consequences is never possible in no way implies that neutrality should be jettisoned as an ideal. When adopted in a non-dogmatic fashion, neutrality remains essential to the stable functioning of a multicultural society. If the state favours or is perceived as consistently favouring one group over another, the fairness of the state, its widespread acceptability is called into question. The state becomes the property of one or more favoured groups rather than the indifferent arbitrator among all individuals.

### **7.1.2. Liberal Legitimacy**

Section 2.1.1 discussed Brighouse's argument that state affirmation of, and support for, the national culture does not respect what Rawls refers to as the liberal principle of legitimacy. According to Rawls's interpretation of the principle, constitutional principles must be justifiable to all citizens in terms they "may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason".<sup>20</sup> For Rawls, this implies a restrictive view of public reason according to which citizens are precluded from offering reasons which cannot be justified in terms independent of their comprehensive view. My position, argued for in Chapter 6, is that this view of public reason is flawed; it is unfair to citizens holding certain perspectives and impedes democratic debate from fulfilling its legitimizing and epistemological functions. An alternative view of liberal legitimacy, that of Habermas, stresses not the content of the reasons put forward but the conditions under which the debate is conducted: deliberation must take place "under conditions of communication that enable the free processing of topics and contributions, information and reasons in the public space."<sup>21</sup> Brighouse, following Habermas, argues that state support for national identity and culture compromises liberal legitimacy by skewing any debate with cultural implications in favour of the state supported position; minority cultures, as well as minority views within the majority culture, will simply not have the resources to compete with the official view.

Brighouse's position has merit as a justification for benign neglect. It is incontrovertible that state support for any culture or cultures gives those who share in the favoured culture or cultures an advantage in presenting their arguments in a democratic debate which they would not have had in the absence of the support. With regards to cultural majorities, Brighouse's position is sound. But it is perhaps redundant; put the way Brighouse puts it, the justification is simply a restatement of the view that the state should be neutral, a view I generally share. With regard to cultural minorities, however,

the issue is more complicated. The view that benign neglect implies that the state should not take account of the *effects* of cultural difference, that it should not be attentive to the existence of cultural difference, in particular the presence of cultural minorities in a society, will itself very likely compromise liberal legitimacy. In any state, points of view held by majorities (or, in some circumstances, held by minorities who control significant political or economic resources) will dominate the public agenda. Perspectives of less favoured minorities will not just receive less attention, which is to some extent inevitable and, in a democracy often just, but they may receive little or no consideration at all. Those who do not have sufficient resources to make their case in the public square, and those who do not speak the dominant language (both metaphorically and literally) will not be heard to the extent their numbers justify. Legitimacy, in a loosely Habermasian sense, therefore requires the state to address conditions in which perspectives are not being heard because they originate with citizens who share a particular cultural background. Benign neglect as a liberal policy stance must therefore not be implemented in such a way as to preclude state policies which have as their goal the amelioration of disparities in differential access to public debate. This could include such things as subsidized access to the media for “silent” perspectives, monetary support for intervention in Supreme Court cases by certain groups, etc. State attention to, and support for, the ability of minorities to make their positions known is not a violation of liberal legitimacy but rather a necessary requirement for it.

All relevant points of view should, as I argued in Chapter 6, be included in a democratic debate if that debate is to have any legitimizing or epistemological value. Where minorities do not have the economic wherewithal to present their views, state aid is appropriate. Such aid is not justifiable on the grounds that a particular culture, or culture in general for that matter, has any particular normative value; it is justifiable on the grounds that without it perspectives and points of

view held by a significant number of citizens in a society will not be heard. In contemporary liberal democracies, debate takes place in different spheres: the media, political campaigns, parliamentary bodies, civil society in general, the courts, etc. When perspectives are denied access to any or all of these areas because their holders have a particular cultural background, then it is not only permissible but obligatory that a state committed to benign neglect take account of this fact and offer the appropriate assistance--assistance not recognition. (How limited resources should be distributed to accomplish this is, of course, a difficult question.) This interpretation of liberal legitimacy and benign neglect has implications for many areas of government policy, including media policy, education, legal aid and language policy, the details of which I am unable to discuss here. In the concluding part of this thesis, I will sketch the implications for language policy.

Liberal legitimacy must, in summary, take account of language and culture. It must do so, not because these things have any particular normative worth or value deserving special recognition by the state. I believe my arguments in Chapter 4 are sufficient to call this view into question. Rather the liberal state must take account of them to the extent that they are markers for exclusion and unequal treatment; to the extent they are not, they may be neglected. Cultural minorities will inevitably suffer disadvantages in a liberal democratic society in which many important decisions are left to the market--both the economic market and the market of ideas, values and cultural symbols. No state is capable of overcoming all of these disadvantages; nor, absent the view that individuals have a right to live and work in a given culture, is this fact alone a problem. When it comes to ensuring political legitimacy, however, all perspectives must be heard, and this may require state action. Brighouse is incorrect, therefore, to imply that benign neglect simply means that the state does not offer support or special recognition for the majority's language and culture. The state probably need not do so, but this by no means implies that the state should neglect the impact of language and culture on the realization of

other important liberal values such as inclusion and equal treatment. The liberal democratic state is not legitimate if significant societal perspectives, such as those of the poor, immigrants who don't speak the dominant languages, etc., are excluded from public debate, or if they are included in ways which hinder their being given the attention their presence in the population justifies.

### **7.1.3. Equality**

As I discussed in Chapter 2, the concept of equality infuses much liberal thinking; it is a core liberal value. There is, however, no liberal consensus on any particular conception of equality. At a minimum liberal conceptions of citizenship demand, in Carens's words, that:

To be a citizen is to be an equal citizen, at least in principle. Everyone must be equal before the law. There can be no second-class citizens.<sup>22</sup>

Even at this basic level, the question of how the commitment to equality should be instantiated in law gives rise to vigorous debate amongst liberals "about which legal arrangements reflect and enhance our commitment to equal citizenship and which violate or obstruct it."<sup>23</sup> When the fact of cultural pluralism is added to the equation, some liberals see a tension between the liberal values of pluralism and equality:

Liberals are committed to both pluralism and equality, but some people see a deep tension between these values. Some egalitarians warn that emphasis on group identities and cultural differences will legitimate social and economic inequalities or at least distract from them as a focal point of concern. Some pluralists worry that a commitment to equality will bring with it an assimilationist overriding of the respect due to group differences. On their view, it is only to be expected that cultural differences will have social and economic consequences, and a genuine commitment to pluralism requires us to accept the inequalities that result from the cultural differences between groups.<sup>24</sup>

Carens rejects, rightly, the argument that most inequalities are "a product of internally embraced identities and cultural commitments; in reality they result from "externally imposed markers and ascribed cultural characteristics".<sup>25</sup> Nevertheless, no pluralist society can treat everyone equally irrespective of their cultural affiliation. As Parekh argues:

...such inequality [which arises from cultural differences] is unavoidable in any society. Every society has a distinct culture and history, and structures its time and space in different ways...no society can avoid being biased against the practices of, and thus discriminating against, its cultural minorities. Its identity limits its capacity for fairness, and to ask it to be indiscriminantly tolerant in the name of fairness to minorities is to be unfair to it.<sup>26</sup>

The Affirmationist approach to the questions raised by equality and pluralism is, as we saw in Chapter 3, to argue that, given culture's special normative importance, equality demands compensation in the way of state recognition and support for minority cultures; it constitutes a violation of the liberal commitment to equality if individuals belonging to minority cultures are not provided the material, legal and symbolic resources required to offset the disadvantages their status as members of a minority culture confers. Brighouse argues, on the other hand, that any state recognition of culture offends liberal equality: first, recognition of the majority culture may undermine the self-respect of members of cultural minorities as well as generate the potential for the more powerful members of the majority to manipulate the less powerful; and second, special recognition for minorities may limit the opportunities of members of minority cultures by imprisoning them within a small cultural universe which cannot offer the same range of opportunities as the majority culture. Where, between these two extremes, does the indifferent state situate itself?

Benign neglect, as traditionally understood and as proposed by Brighouse, implies that the state take no notice of an individual's culture in the formation of state policy; equality (neutrality, etc.) requires that each person's interests and preferences receive equal weight regardless of his or her ethnicity or culture. The indifferent state would adopt this position as a part of its conception of equality; the state should be indifferent with regards to such matters. But this is only part of a workable conception, not the whole of it. The full conception must take account of society's empirical realities, and one of these realities is that failures of equality are often correlated with culture, language, ethnicity, etc. As Carens argued, the most likely cause of this correlation is the

existence of historical and actual discrimination and unequal treatment. There is no good argument, of which I am aware, that would preclude a liberal indifferent state from recognizing the empirical facts and adopting policies which attempt to overcome them, even if such policies necessitate explicit acknowledgement of ethnicity and culture. The motivation for such policies is to achieve equality, not promote or recognize any specific culture. If, for example, it were empirically likely that the obvious inequalities faced by Aboriginals could be ameliorated by the promotion and recognition of Aboriginal languages, the indifferent state would evaluate the potential benefits of programs and policies to do just that. It would also evaluate the cost of such programs, as compared to other possibilities, and any potential negative effects (such as the potential limitations on future opportunities as noted by Brighthouse). The state would be indifferent to language and culture as such, but not to the possibility that they play a significant role in causing unequal treatment, and hence that they might play a role in remedying it. Carens, in the somewhat different context of how best to instantiate principles of justice, eloquently argues the general point as follows:

All principles require mediation, instantiation, embeddedness in some concrete social context. Different forms of mediation have different advantages and disadvantages,...and may fit together more or less well with other forms of mediation. But sometimes the particularity of the mediation overwhelms the abstract principle it allegedly instantiates.<sup>27</sup>

Pragmatism in the service of the ultimate value—equality—must be the rule. It is its pragmatic willingness to take account of, but not specifically affirm the value or the worth of any particular culture, that leads me to conclude that the indifferent state is fully compatible with the type of Affirmationist thinking exemplified by Young and Phillips.<sup>28</sup> What is at issue is the best way to instantiate and implement equality, not some philosophically questionable right to culture.

There are, however, circumstances in which inequalities arise because individuals, understandably, cling to the beliefs and practices of their culture. In societies historically dominated

by Christianity for example, “The practice of making Friday a working day is a historical accident and not designed to discriminate against or disadvantage Muslims.”<sup>29</sup> Such “historical accidents” embodied in state policies and societal practices do, however, create substantive inequalities if individuals wish to practice their faith; they are not “neutral” in their impact on citizens. As I discussed above, justificatory neutrality by itself does not, necessarily, imply that any particular policy is justifiable. Remedies to the unequal impact can be sought; individuals facing such inequality may seek relief, not because they have a right to culture, but because they have a right to live their lives as they see fit and to have the state accommodate them within the limits of “reasonable” cost. Parekh summarizes the point as follows:

Since no society can ever be totally neutral between different cultures, every member of it, be it a native or an immigrant, must accept the implied inequality as the necessary basis of his or her membership of it. He or she can ask that the inequality be reduced, but not that this be done *whatever the cost*<sup>30</sup>

The issue is political and subject to democratic deliberation and decision; costs and benefits, both material costs and benefits and potential impacts on other fundamental values, must be considered in any such debate.

In the United States, as well as in Canada, the need to modify standard policies and programs to ameliorate their unequal impact on individuals belonging to different groups has generally only been addressed in cases of religious groups. If my arguments in Chapter 5 have any merit, there is no clear distinction between religion and culture, and no reason why a similar approach should not be adopted with regards to ethnic, cultural and other groups. To do otherwise is to treat individuals unequally. Spinner-Halev argues as follows:

If we give religion special treatment as a matter of law or policy, then religious people will have more protection from laws than nonreligious people. Clearly, this violates the liberal ideal of treating everyone equally before the law... Treating the religious to exemptions from the law that are denied the nonreligious would be giving a certain class of people more rights than others.<sup>31</sup>

He argues, persuasively in my view, that religiously held positions are not different in kind from deeply held positions of other kinds; there is, therefore, no reason why the state should not, to the extent feasible, try to accommodate all such positions in the name of maximum equality and maximum liberty. This is the position of the indifferent state.

The indifferent state is committed to substantive equality. Consequently, it is fully prepared to take account of language and culture when differences in these give rise to inequality in the polity. It is, however, indifferent to the value, worth or survival of any particular language or culture unless attention to these matters are pragmatically required to address issues of equality. In this regard, its position is potentially compatible with those of Young and Phillips, but not those of Kymlicka, Taylor, Tamir and Raz..

#### **7.1.4. Autonomy**

Brighouse takes the position that the concept of autonomy is an important liberal justification for benign neglect. He argues that state recognition of minority cultural groups could serve to permit illiberal and authoritarian groups to “organize themselves in ways that violate the autonomy supporting rights of some members of the minority”. His argument encompasses both external and internal autonomy. With regard to external autonomy, he is concerned that certain groups will impose restrictions on the options available to individual members. The normative foundation for his position is, however, internal autonomy: “The idea is that the way people live should be in some deep sense genuinely their own”.<sup>32</sup> Given my discussion in Chapter 4, it is evident that this particular justification for benign neglect can play no part in the justificatory values of the indifferent state which focuses on external autonomy. Its moral psychology of citizenship requires that, while individuals’ expressed preferences must in some sense be regarded as their own, that is as not simply the robotic repetition of the ideas of another individual, the indifferent state should normally, in the absence of clear

empirical evidence that the individual is mentally incompetent, accept the views of the individual citizen as that citizen presents them. (This holds for most adult citizens; unfortunately, I cannot deal with the issue of children or the role that the state can or should play in educating them for citizenship.) To the extent that minority groups do not exercise legal coercive power over (adult) members, the fact that the group may be authoritarian in outlook or practice is irrelevant.

Consistent with the minimalist moral psychology of citizenship sketched in Chapter 4, the indifferent state focuses its attention on what I termed external autonomy, the right of individuals to pursue their interests and preferences regardless of the psychology which gives rise to these. ~~It~~ It should be clear that I am discussing the general tenor and policy of the state rather than setting forth precise policy prescriptions. Any state which seeks to promote the general good will inevitably limit and restrict many interests and preferences; similarly, it could not, for example, blind itself to powerful or widespread attempts to manipulate individuals' opinions.

The question of illiberal groups has attracted a considerable amount of philosophical interest.<sup>33</sup> A brief consideration of the issue serves to highlight the difference between my conception of benign neglect, Brighouse's conception, and the views of liberal Affirmationists. In general terms, the issue is the appropriate attitude of the liberal state towards cultural and other groups which in doctrine, practice or both are authoritarian, hierarchical, sexist, racist or in some other way significantly depart from liberal ideals. Comprehensive liberals, including Affirmationists, argue that liberalism must go all the way down, holding that external autonomy requires the conditions for the development and exercise of the psychological conditions necessary for internal autonomy; the state should therefore actively promote these conditions throughout society, including inside illiberal cultural groups. Sawitri Saharso summarizes this position as follows:

**For many theorists individual autonomy is liberalism's core value. Although they are not insensitive to the fate of minority cultures...the right of autonomy is what for them**

defines the limits of toleration. It cannot be tolerated that cultural groups impose restrictions on their members.<sup>34</sup>

Andrew Kernohan, for example, argues that membership in an “oppressive culture” may lead a person to fall into a form of false consciousness:

In an oppressive culture, a person can acquire a false or bad ethical identity. Her ethical entity is her conception of the good and the right, her critical interests as constrained by her sense of justice. This is what characterizes her as an ethical being, and it is the reference point for her decisions about how to lead her life. Her understanding of the good and the right will be based on the social meanings of goods in her culture. If she is a member of a patriarchal culture, then she will find that one aspect of the social meanings of many goods will be that they should be distributed on grounds of gender. Because such grounds are arbitrary from a moral point of view, her conception of the good will be based on beliefs that egalitarian liberals must think false. This is a harm to her and, by extension, a harm to her identity. Reforming her cultural environment will eventually remove or mitigate this harm.<sup>35</sup>

As Saharso points out, however, “this does not mean that these authors unconditionally license intervention in a community’s culture”, partly “because as liberals they are also committed to protecting the private sphere from intrusion”.<sup>36</sup> Kernohan would, largely for pragmatic reasons, refrain from coercively intervening in the internal affairs of such groups. He would rather rely on state financed and run advertising and providing financial support for suitably liberal groups while withholding it from illiberal ones.<sup>37</sup> (Kernohan is actually taking a position in favour of equality rather than autonomy, but the argument is extendable to autonomy and is often made by comprehensive liberals.) The justification for such a position is the liberal value of internal autonomy rather than external autonomy. As Kymlicka says: “what distinguishes liberal tolerance is precisely its commitment to [internal] autonomy”.<sup>38</sup> Indeed, for Kymlicka and other liberal Affirmationists, autonomy is a two-edged sword and it cuts in both directions: autonomy justifies cultural recognition in the first place, but only if the recognized culture already has the liberal values held by the majority. If, however, one rejects autonomy as an appropriate postulate of the moral psychology of citizenship for a multicultural liberal democracy such as Canada, the argument for state action in all such matters

disappears. Furthermore, even the sorts of policies advocated by Kernohan would violate the requirements of state neutrality as I discussed them above. The indifferent state would, therefore, adopt the position that if mentally competent adults not subject to either legal coercion by the state or illegal coercion by the group itself want to form, join or otherwise participate in illiberal groups, the state should respect their expressed preferences. There is no compelling reason why the state should concern itself with the internal structure and functioning of such groups, providing they obey the law. It is quite possible that what many individuals want is to live in an illiberal cultural environment; it is also, in my view following Berlin, not possible to argue that such a life is necessarily not valuable or fulfilling for the individual. Spinner has persuasively argued this position as it applies to religious groups:

There is a difference between choosing a life of obedience and living the Millian life of interpreting one's tradition and experience in one's own way. There is a difference between living a life of faith and living a life of reason. It is wrong, though, to rob the person who chooses the life of obedience of all autonomy. If someone chooses a way of life that many liberals find odd or incomprehensible, that is no reason to deny them their choice. As long as they are not hurting others and still allow others to make their own choices.....liberals need to respect their choices. Autonomy, as Raz says, is a matter of degree: some people will have more of it and some less of it. People who choose the life of faith and obedience have enough autonomy. Those who live the Millian life of individuality or the Kantian life of reason, may be autonomous in a robust manner. But there is no reason to think that everyone in a liberal society should or will choose such a life.<sup>39</sup>

The state, as an institution, should not provide any positive recognition to groups, illiberal or otherwise, which would imply to the members of such groups that the state supports any particular belief or practice of the group; neither, however, should it as an institution actively disparage or campaign against their views or ways of life. On the previously discussed premise that a wide concept of public debate and democratic deliberation implies that no cultural practice is exempt from public criticism and scrutiny, individuals are free to offer their perspectives on these practices.

Spinner argues, and I agree, that "liberal democracies generally have a mainstream society

within them” which is broadly supportive of liberal values and institutions. If illiberal groups tend to be “smaller communities intermeshed with society in varying degrees, then there is no reason to think that every community within the larger society must support autonomy in a robust manner.”<sup>40</sup> It is an empirical rather than a philosophical question whether or not the broader society is seriously threatened by the proliferation of any or all such groups. In the absence of evidence that there is a threat, the state should remain indifferent to their activities. From the perspective of the indifferent state:

Supporting autonomy means allowing people to choose how they want to live their lives. It should not mean restricting the choices they can make by ensuring that every community and culture within a liberal state supports autonomy.<sup>41</sup>

#### **7.1.5. The Indifferent State**

Michael Oakeshott, in a work published for the first time in 1996, distinguishes between two attitudes towards governing: the politics of faith and the politics of scepticism.<sup>42</sup> From the perspective of the politics of faith:

...political decision and enterprise may be understood as a response to an inspired perception of what *the* common good is, or it may be understood as the conclusion which follows a rational argument: what it can never be understood as is a temporary expedient or just doing something to keep things going.<sup>43</sup>

The politics of scepticism, on the other hand, takes a different view:

[it] may be said to have its roots either in the radical belief that human perfection is an illusion, or in the less radical belief that we know too little about the conditions of human perfection for it to be wise to concentrate our energies in a single direction...to pursue [perfection] as the crow flies...is to invite disappointment and ...misery on the way.<sup>44</sup>

Oakeshott’s view is that neither of these two extreme attitudes towards governance is viable on its own, nor has either ever completely dominated our political thought or practice:

In short, when either of these styles of politics claims for itself independence and completeness, it reveals a self-defeating character. Each is not less the partner than the opponent of the other; each stands in need of the other to rescue it from self-

destruction, and if either succeeded in destroying the other, it would discover that, in the same act, it had destroyed itself.<sup>45</sup>

It is possible to see in Oakeshott's distinction a description of what distinguishes my conception of the indifferent state both from the Affirmationist position and from the ideal of a rigorously neutral state. It is tempting to adopt the classic bureaucratic dodge of presenting two positions—Affirmation and rigorous neutrality—as examples of faith and scepticism respectively and to argue that the evident defects of both render the middle position, which was all along the bureaucrat's choice, the desirable solution. I do not, however, think that the positions cash out in this way: both are, in fact examples of too much faith and not enough scepticism. At the theoretical level, both reflect a style of thinking which Miller, cited in Chapter 1, describes as searching for some fundamental principle on which to build a theoretical edifice which permits us to label a practice, action or institution as just and fair in all circumstances. At the level of practice, both have too much faith as to what a modern state faced with deep cultural diversity can (and, if ought must imply can, should) do.

It is now thirty years since Rawls rejuvenated normative political thinking in the Anglo-American world. His Theory of Justice outlined a comprehensive and logical picture of what a just liberal democratic society would look like. He made, as the Affirmationists constantly tell us, no reference to language and culture (and inadequate or unjust reference to gender), implicitly assuming that his principles apply to a culturally homogeneous setting. It is not necessary to accept Rawls's view of justice in its details to see that it is broadly congruent with what Western liberalism has, historically, been about: equal access to rights and freedoms and, more controversially, some amelioration of economic inequalities generated by the market. It is probably fair to say that with regard to rights and freedoms some progress has been made in the intervening years; but nobody would argue, I think, that practice has caught up to theory. The political and institutional problems of

attempting to instantiate Rawls's or any theory of justice are enormous; one must have a strong element of what Oakeshott calls 'faith' in order to think it possible at all. Adding to the theoretical edifice the idea that a citizen has a right to her or his own culture, the idea that because citizens' mental health depends on the state recognizing and actively respecting the value and worth of their culture, and they therefore have a right to such recognition, requires, for the reasons put forward in Chapters 3-6, a degree of faith more appropriate to religious belief than to political thinking.

The indifferent state justifies its approach to issues on the same general principles of liberalism that Brighouse uses to justify rigorous neutrality and benign neglect and which most (liberal) Affirmationists use to justify their policy perspectives: legitimacy, autonomy, neutrality and equality. As I have argued, these liberal values should be interpreted in a flexible, nuanced, and sceptical way. Attention must be paid to the likely outcome of any policy designed to promote a particular value; care must be taken to avoid that the promotion of one value does not compromise another value beyond the limits of the acceptable. There is a tendency among political philosophers to think that 'we can have it all', that if enough people with enough good will are enlightened by enough good liberal theory, justice may be had. History, I think, shows us the danger of too great a belief in the malleability of society

The indifference toward language and culture, in and of themselves, appropriate for the state is indifference defined by *The New Shorter Oxford English Dictionary* as "having no inclination or feeling for or against a...thing; lacking interest in or feeling for something; unconcerned, unmoved, uninterested". This indifference does not, as I have repeatedly argued, mean indifference to the consequences for individuals and for the core liberal values of the existence of cultural diversity. As Young argues, "a person's social location in structures differentiated by class, gender, age, ability, race, or caste often implies predictable status in law, educational possibility, occupation, access to

resources, political power, and prestige".<sup>46</sup> In other words, a person's culture may well complicate, make more difficult, the realization of core liberal values. Young makes the empirical assumption, with which I agree, that claims for cultural recognition are usually about something more concrete:

... I disagree with Taylor and those who have taken up his account that misrecognition is usually a political problem independent of other forms of inequality or oppression. On his account, groups seek recognition for its own sake, to have a sense of pride in their cultural group and preserve its meanings, and not for the sake of or in the process of seeking other goods. But I do not believe this describes most situations in which groups demand recognition. Where there are problems of lack of recognition of national, cultural, religious, or linguistic groups, these are usually tied to questions of control over resources, exclusion from benefits of political influence or economic participation, strategic power, or segregation from opportunities. A politics of recognition, that is, usually is part of or a means to claims for political and social inclusion or an end to structural inequalities that disadvantage them.<sup>47</sup>

With minor changes of wording, Young's analysis of Taylor's position could be extended to cover that of the other Affirmationists (except Young herself and Phillips) whom I have discussed. I would only add that, where the claim is *not* about something other than pure recognition, the state should be indifferent (i.e., ignore it to the extent politically feasible) towards it. Without a more convincing moral psychology of citizenship than that so far put forward by the Affirmationists, there is no normative reason to take special account of such claims; they are political claims for special treatment which should be treated as such.

The value of the differences between Affirmationist thinking, a doctrinaire approach of benign neglect, and an attitude of state indifference can only be made clear by looking at concrete policy dilemmas; the following three sections attempt to do this.

## **7.2. Implications for Public Policy**

Whether or not one adopts the position that culture has special normative value which creates cultural rights or a right to a (particular) culture has important implications for both the policies actually adopted and for the way issues are framed and discussed. Similarly, whether or not the non-

Affirmationist holds to the traditional liberal ideal of the rigorously neutral state, which as I argued above is both not attained and unattainable, or adopts the more flexible ideal of state indifference also implies different policies and different approaches to their consideration. The goal of the following discussions of three policy issues which confront most liberal democracies in general and Canada in particular is to explicate these differences and to show how they cash out in terms of concrete policy. As I argued in Chapter 1, it is impossible to assess the normative worth of a particular principle until its cash value in terms of institutional design and concrete policy is calculated.

### **7.2.1. State Symbols and the Inclusion of Cultural Minorities<sup>48</sup>**

For many Canadians (especially for Canadians of British descent), the RCMP is not just a police force; it is an important symbol of the country, its history and its traditions. Consequently, when the force decided to modify its regulations concerning uniforms in order to permit the display of symbols deemed integral to an officer's religion, there was a loud public outcry in opposition to the change, including (ultimately unsuccessful) court challenges. It is important to note that the actual issues raised in public debate did not fit comfortably into either the Affirmationist paradigm of state recognition or the benign neglect position of a rigorously neutral state. The RCMP's change of policy was not motivated by any deep commitment to the equal treatment of all cultural minorities; it was not driven by the belief that since its uniform regulations implicitly permitted some religious symbols of the Christian minority (wedding rings for example) that all cultures should be similarly affirmed; the RCMP was simply attempting to expand its potential pool of applicants in order to attract members of minorities who might more easily interact with their communities than officers from the cultural majority. Vocal opponents of the policy change most emphatically did not put forward arguments about the need for a neutral state which would treat all citizens in an identical manner. The policy was opposed largely on the grounds that it represented a 'betrayal' of the tradition and history of Canada;

it was seen as 'pandering' to the desires of new immigrants who failed to show sufficient respect for the cultural majority and insufficient willingness to assimilate into that majority.

An Affirmationist response to the issue is available in Kymlicka's discussion as to why the RCMP's policy change was normatively correct. He puts forward two arguments to support this position. First, the policy change is inclusive in that it facilitates the entry of immigrant and other cultural minorities into the institutions of the general society.<sup>49</sup> This argument, while it would contradict, as I discuss below, the idea of a rigorously neutral state, is not necessarily in conflict with my conception of an indifferent state. If there were no strong countervailing principled arguments, this argument from inclusion should be given a great deal of weight. Kymlicka's second argument, however, is more problematic. It appeals to the concept of equality. The existing uniform regulations did not treat everyone equally in that they were designed with the preferences of the majority community in mind:

...the existing rules about government uniforms have been adopted to suit Christians...existing dress-codes do not prohibit the wearing of wedding rings...an important religious symbol for many Christians (and Jews).<sup>50</sup>

The Affirmationist response is that, given the normative value of culture, the free expression of that culture is a right and should be permitted and recognized by the state in (presumably almost) all circumstances. A right, a principle in Dworkin's usage, trumps other considerations and can only be infringed when it conflicts with other rights. The solution is not therefore to try and make the dress code approach more closely the standard of absolute neutrality by banning permitted symbols such as wedding rings. This approach would, for an Affirmationist, simply augment the harm by repressing even more cultural expression. The ultimate RCMP response, modify the code, is thus the correct response on this view.

How would the proponent of the rigorously neutral liberal state address the issue? As I

indicated, this was not a widely expressed position in the actual public debate. We can, however, look to arguments put forward in the United States Supreme Court on a similar question.<sup>51</sup> A serviceman who was an Orthodox Jew and an ordained rabbi argued that an air force regulation prohibiting him from wearing his yarmulke violated his First Amendment freedom of religious expression. The court, in rejecting his argument, put forward the standard argument for a neutral state:

...the challenged regulation reasonably and evenhandedly regulates dress in the interest of the military's perceived need for uniformity.

...the rule that is challenged in this case is based on a neutral, completely objective standard – visibility. It was not motivated by hostility against, or any respect for, any religious faith. An exception for yarmulkes would represent a fundamental departure from the true principle of uniformity that supports that rule.<sup>52</sup>

We have here a classic defence of neutrality based on justificatory neutrality. The regulation is not a violation of state neutrality because its guiding purpose is not to discriminate or favour one cultural group over another; the regulation is motivated by a desire for an efficient air force. On this view, the fact that the consequences are not neutral is irrelevant. As I argued above, however, this obsession with internal mental states and the refusal to consider the consequences is untenable. The indifferent state would adopt the more pragmatic view that both justification and consequences are important and must be taken into account. How then would a theorist who adopts the ideal of an indifferent state approach the issue of the changes to the RCMP dress code?

The RCMP standard dress code undoubtedly passes the standard of justificatory neutrality; there is absolutely no reason to assume that the code was motivated by anything other than a desire for a standard uniform. It is not, however, non-neutral in its impact. It is not necessary to accept Kymlicka's argument as to wedding rings to reach this conclusion; wedding rings are, after all, also symbols of a civil status; nor are they, to the best of my knowledge, actually required by most Christian or Jewish sects. The regulation is non-neutral as to impact just because it penalizes anyone

whose culture dictates a particular way of dressing. It should, therefore, be reviewed to see whether or not change is possible to accommodate minorities, not because they have a right to cultural expression, but simply because a regulation that is non-neutral in its impact requires a positive justification. Are there then compelling reasons as to why the dress code should have been maintained without change? I believe the answer to this question is yes.<sup>53</sup>

First it is clear that this issue confirms the analysis of Chapter 5; ‘cultural’ claims are more often than not religious claims. The RCMP dress code was modified to permit religious symbols, not ‘cultural’ symbols, which are an “essential” part of a given religion. The decision to permit such symbols, rather than just any cultural artifact, forces the state to become involved in adjudicating religious doctrine, to determine what really is “essential” to a given religion and what is not. It would require the state to judge religious doctrine and to determine where religion ends and ‘mere’ culture begins. During the litigation concerning the RCMP decision, expert testimony was offered as to what the Sikh religion really required and what it did not. From a liberal perspective, this fact alone is troubling. The prospect of the state as arbiter of religious doctrine should also be troubling to religious believers. Alternatively, it would be possible for the state to rely on the advice provided by designated religious leaders or spokespersons. The inevitable result of this would be to strengthen the authority of such leaders and weaken the position of any religious dissidents, a result perhaps congenial to religious hierarchies but not necessarily to all members of the group or, for that matter, to believers in individual autonomy.

A second consideration is that the RCMP’s decision, argued for by an Affirmationist such as Kymlicka as a better expression of true neutrality than the fraudulent formal neutrality of the standard uniform, has the potential to violate neutrality of a more important kind. The modified dress code permits the RCMP to treat potential applicants in a more neutral fashion—to treat them more

equally--than did the standard code, but neutrality and equal treatment have another more important meaning. It must also mean that citizens receive and feel themselves to receive an equitable and neutral treatment by the agencies of the state, particularly those agencies responsible for the imposition of physical force. The decision to allow the agents of the national police force to publicly express their religious convictions while working has at least the potential to compromise perceptions of state neutrality and objectivity in the very sensitive area of law enforcement.

A. Gualtieri, a professor of religion, argues that religious symbols "...matter deeply to the people who use them precisely because of the personal and moral significance their communities find in them".<sup>54</sup> The religious symbol encodes the way a given religion and the person using the symbol understand the world.<sup>55</sup> Religious symbols in effect serve to communicate to others how the wearer of the symbol views the world. Unfortunately, not all such communications are happy ones. It is an unhappy fact, but a fact nonetheless, that most religions arouse strongly held negative feelings for at least some non-members. Many people, of Northern Irish Protestant extraction, for example, perceive the Roman Catholic church and its practices and doctrines in a negative manner; the reverse is also true. A similar statement could be made about some adherents to the Jewish and Islamic faiths. Many secular feminists would undoubtedly perceive the Islamic scarf or the veil as demeaning to women, regardless of whether or not this is an accurate interpretation of the symbol. Some atheists at least, and I fall into this category, regard all religious symbols as representing obscurantist nonsense, and hence, find them offensive; particularly offensive is any suggestion that the beliefs they represent are in any way condoned or supported by the state.<sup>56</sup> It could of course be argued by an Affirmationist that such perceptions are not only unjustified but they fail to accord 'respect' to the views held by the symbol. As I argued in Chapter 4, however, this conception of respect is too strong to be sustained; I must respect the right of the symbol wearer to hold and (in most circumstances) express his views,

not the views themselves.<sup>57</sup> It is reasonable to assume that the person who feels sufficiently strongly about a particular world view to wear its symbol holds that world view and its “guides to action on the levels of both personal morality and social arrangements”.<sup>58</sup> Would therefore a feminist demonstrating in favour of the right to choice have the perception of receiving impartial justice if the police officers sent to separate her demonstration from a counter demonstration of anti-choice supporters were wearing a visible religious symbol of the Roman Catholic Church? The officer may in fact be able to act in an impartial manner, but the perception of such impartiality will be lacking. Similar arguments could be made about other potential situations involving law enforcement.

From the perspective of the indifferent state, therefore, the decision of the RCMP to modify its dress code does not lend itself to the clear-cut simplicity of either the Affirmationist or the uncompromising neutrality position. The RCMP’s new policy has much to recommend it: it is inclusive of cultural minorities; it treats job applicants in a neutral and unbiased way; and it makes an important national institution more representative of the actual population of the country. On the other hand, there are also strong arguments against the RCMP decision: the policy requires the state to meddle in questions of religious doctrine; and the perception of impartial justice for all may well be compromised in the very sensitive area of law enforcement. What then is the ‘correct’ answer? I believe that the RCMP decision was a mistake. In a culturally diverse society like Canada the state should present a neutral face, to the maximum extent practically possible, to its citizens; this is especially true in activities such as law enforcement where the state exercises direct power over the lives of its citizens, or where it must adjudicate claims between them. While there are undoubtedly benefits to the RCMP’s decision, the cost of these benefits, the potential loss of the appearance of impartiality is too high.<sup>59</sup> I do not, however, believe that the type of rigorous neutrality (neutrality of justification without regard to consequences) argued for by Brighthouse in his defence of benign neglect

is viable. An indifferent state must adopt a more nuanced approach; within limits the 'right' answer depends on the circumstances, on what is at stake. Maximizing the space for religious and cultural expression for all groups must be balanced against the impact on important core state functions which require both impartiality and the appearance of such impartiality. There is nothing in this argument which can (should) be used to justify policies such as the prohibition of students displaying religious symbols in school.<sup>60</sup> It is the state which must try to be and to appear impartial to its citizens, to try and express its indifference towards their cultural beliefs, practices and origins, not the reverse.

### **7.2.2. Should We Have Official Languages?**

Should a liberal democratic state characterized by cultural and linguistic diversity have an official language or languages? Should such a state provide official recognition and support to the language spoken by some groups of its citizens, national minorities for example, and not for others? Or should the state provide support for all languages represented in the population when the number of speakers of such language reaches some minimum? Of all the challenges to benign neglect as a policy stance, that posed by language is, as I discussed in 5.4, the most difficult. Culture and religion are, as I have argued, overlapping concepts, but language is an aspect of culture which falls outside the area of overlap.<sup>61</sup> Furthermore, while the state may not give recognition to a language as special or official, it must make innumerable decisions about such things as the language of education, the courts, Parliament and other state institutions and services. If the state is at all interventionist in its policies it may have to decide such things as the languages of the broadcast media etc. From the perspective of democratic theory and liberal legitimacy, as I defined it, all citizens must have the opportunity to have their values, interests and perspectives considered in the decision process; their ideas and arguments must be mutually intelligible, not at some theoretical level of public versus non-public reasons, but at the very basic level of linguistic understanding. The ability, or lack thereof, to

speaking a society's dominant language will also strongly influence the economic and social well-being of citizens. In the Canadian context, this means English in most parts of the country and French in Quebec. Even in Quebec, an individual's economic success will be greater if he or she is capable of functioning in English as well as French. The dominance of English, and to a much lesser extent French, are facts of life that are unlikely to change in the near future. This also means that a full and successful life (as most people define these things) cannot now or in the future be led without a working knowledge of English or French.

Affirmationists do not necessarily agree why language is important. Some like Kymlicka and Raz justify language rights in what Denise G. Reaume calls "instrumental terms"—i.e., the protection of language and culture is justified because it "better enables one to achieve objectives that are important independently" of the language and culture itself.<sup>62</sup> Reaume argues that such an instrumental approach "can provide a very insecure foundation for cultural protections" and "is unlikely to provide a strong justification for understanding such rights as articulated by their advocates."<sup>63</sup> Other Affirmationists, such as Taylor, attribute intrinsic worth to a person's own language, arguing that "if we're concerned with identity" of which language "is the key component", then what is more "legitimate than one's aspiration that it never be lost," regardless of instrumental considerations.<sup>64</sup> There are thus differences in the language policies advocated by the Affirmationists.<sup>65</sup> Regardless of their differences, however, Affirmationists in general support active state action to promote and protect the languages of what Kymlicka calls national minorities, as well as supporting the Canadian policy of officially recognizing and supporting two official national languages. Immigrant groups, on the other hand, deserve respect and support for their cultural practices, but they have chosen to move to a society where another language is dominant, and where their languages have little prospect of long-term public survival. Consequently, they have no right to

their language and can expect no recognition or support for it. This brief summary of Affirmationist approaches to language policy is obviously simplistic to the point of caricature, but it captures the core of their approach.

The precise policy stance favoured by the traditional view of benign neglect is also subject to a variety of interpretations. It would presumably countenance no official language regime and no active state protection for national minority languages or for the languages spoken by immigrants. The language of governance, education, the courts and other government services would be determined by the normal political process which would inevitably mean most state functions would take place in the language of the majority in the particular jurisdiction offering the service. Again, this is a simplistic summary but gives the basic picture.

The indifferent state approach to language policy has more in common with the second position. As I argued in Chapter 4, the moral psychologies which sustain claims to culture and language rights are simply too controversial to be given much weight in the political process. Additionally, as I argued in 5.4, the thick theory of language is an empirical hypothesis which is both unproved and unnecessary; the desire of individuals to live in a society dominated by their own mother tongue can be explained by the pragmatic advantages this gives without recourse to deep philosophical or unproven empirical theories. Therefore, the indifferent state rejects the view that language rights as such exist. The right of individuals to equal consideration of their interests, to full inclusion in the democratic process and to express themselves and their perspectives do exist. So does the duty of the state to ensure that these rights can be exercised to the maximum extent possible consistent with other state obligations. The indifferent state must, therefore, look to these values and rights to justify any policies, or any lack of policies that relate to language.

The first implication is the rejection of the idea of an official language or language. The

designation of a given language as official does not, in and of itself, need to make any substantive difference; difference is made by the concrete decisions taken about government services. As Reaume argues, however, “The creation of a regime of official languages does in a sense mark these languages as special.”<sup>66</sup> But this policy of official state recognition for the majority language groups is, she says, not unfair to speakers of minority languages because “abolishing it would not benefit any minority language group”; even in the absence of such a policy “the French and English would still exercise *de facto* dominance in Canada”.<sup>67</sup> The symbolism is, however, important. It tells citizens what languages are regarded by the state as important and which individuals (those speaking the official languages) are fully part of the national “we”. At the level of symbolism, there is no real difference between religion and language; the only purpose of designating one or the other as “official” is to recognize and enhance the one chosen as somehow more important or better. The Canadian constitutional approach to this issue can be contrasted with that of the framers of the United States Constitution:

The framers of the Constitution were pragmatists as well as theorists. They recognized (and some were concerned about) the multilingual character of their constituencies and thus understood how divisive any attempt to establish an official language would be. They also understood the nation’s future need for immigrants, and perhaps they concluded that establishing an official language would suggest that some groups would be less welcome than others.<sup>68</sup>

The same authors who wrote the above do go on to acknowledge the important role that government actions actually played in the use of English as a common language and the fact that state governments were not precluded from declaring English (or, presumably, anything else) as an official state language. In Canada, the policy of two official languages reflects the fact that the two languages dominated at the time of the original constitutional agreement and were widely in use at that time. It also reflects Trudeau’s attempts to undermine support for Quebec independence. As such, the policy may be required by political reality and political bargaining. But it is not required by any putative right to language, and it does symbolically raise the importance and value of French and English, and such

symbolism being relative, lower the perceived worth of Aboriginal languages and the languages spoken by immigrants. Decisions as to which government services will be offered in which languages should be guided, not by symbolic considerations, but on the basis of the need and demand for such services.

The second major principle of the language policies of the indifferent state is that languages spoken by minorities of citizens will stand on the same level regardless of whether or not the minority is a national minority or an immigrant minority. There is no justification for dividing citizens into categories which depend upon the time they or their ancestors became citizens of the country. (I will briefly discuss this again below when the issue is justifications for Aboriginal self-government.) Affirmationists, such as Kymlicka, believe that individuals have a right to their own native language and that language should therefore be affirmed and supported by the state. They also realize, however, that it is impossible in societies such as Canada (or the United States) to offer support to the very many languages spoken as their maternal language by citizens. The solution offered is to discriminate on the grounds that national minorities did not choose to be incorporated into the polity, while immigrants made the choice to leave their language behind them. There is a peculiar inconsistency between the idea that language is a right and the claim that some individuals have chosen to give up this right by the decision to immigrate. It is not generally the case that host governments ask immigrants to surrender their rights in return for admission to the society. Most liberals would look askance at the idea of asking immigrants to give up their right to practice their religion, for example. Why is it acceptable to demand that they give up the right to language? The practical response is that their mother tongues will not survive in any case in their new homelands; but this is also quite possibly the case for most of the Aboriginal languages as well. A state that wishes to be indifferent to the language of its citizens but, at the same time, treat all citizens as equals will,

therefore, offer no special support to any minority language justified by a right to language.

The third general principle of language policy is that all citizens should have the opportunity to be included in the democratic life of the society. There are in Canada citizens who do not speak English or French; many never will be able to express themselves in any meaningful way in either language. These citizens may be immigrants who lack the capacity to learn a new language or who must, in order to survive economically, work such long hours that they simply do not have the time to learn more than the rudiments of one of the dominant languages. They may be Aboriginal people who have grown up in isolated circumstances (isolated from the dominant society that is) and hence have never had the opportunity or the desire to learn English or French.

Ensuring that citizens who do not function in the dominant language have the opportunity to be included in democratic debate and decision making is expensive. While it is clear that such citizens will always suffer significant disadvantages relative to those who speak the dominant language, there are various ways in which such inclusion can be facilitated. These include such things as official documents, including electoral ballots, produced in various languages, the provision of governmental services in various languages where numbers merit it, the right to file and pursue law suits in languages other than the dominant languages (through the use of simultaneous interpreters if necessary), etc. Many Canadians, citizens, are unable to receive, or receive only with difficulty, the basic benefits and services to which they are entitled. If an individual does not speak English or French, or if she speaks either in only a rudimentary way, it is very difficult to fill out the forms, answer the questions, etc. which are required in order to receive Employment Insurance, job training etc. Is it fair that a citizen living in Toronto who speaks Chinese or Spanish has difficulty receiving his entitlements while one who speaks French does not? (I really don't know, but I would guess that there are probably more unilingual Hispanophones or Sinophones in Toronto than Francophones.) All

of these possibilities, of course, cost money, but does justice demand that limited resources be spent on the basis of whose ancestors got here first, or should they be allocated on the basis of ensuring the maximum participation for the maximum number?<sup>69</sup>

The fourth and final principle to guide the indifferent state is that it is responsible to ensure a functioning prosperous society. In reality, this means that most citizens must speak the dominant language and speak it well. Therefore, while the state must accept that some individual members of some minorities will never speak the dominant language, it has a positive duty to ensure that all have the opportunity to maximize their linguistic abilities, if they so choose. At the policy level, this should take the form of more resources devoted to assisting those who do not speak the dominant language to do so. It is also the case that multilingual fluency is a benefit to an individual citizen, and a society which contains many such individuals is enriched both culturally and economically. But, in reality, the need for Anglophones to speak other languages is much less than it is for others. English is now the dominant world language in business and science; this is a fact which may be disagreeable, but it is nonetheless a fact. French is undoubtedly the dominant language in Quebec, but it does not and will not dominate in the same way that English does in the rest of North America.

There remains the question of whether or not a multilingual society can be a community of communication in the sense necessary to confer democratic legitimacy on political decisions. Is it possible in the modern world for a country like Canada, Belgium or Switzerland to have sufficient communication between those who speak different languages to constitute such a community? Is it possible for a multilingual group of states such as the European Union to have sufficient debate amongst citizens speaking different languages to confer democratic legitimacy on political decisions? In a factual sense the Affirmationists are correct. Unless a particular minority language has sufficient numbers of speakers and sufficient economic wherewithal to constitute Kymlicka's societal culture,

individuals who wish to fully participate in modern life will have to develop the ability to function in the dominant language. This in no way lessens the state's obligation to take active measures to seek out their views and perspectives, perhaps by policies which facilitate the establishment of organizations of such individuals and the subsidized translation of their views, and include them in the democratic process, or its obligation to ensure that such individuals have access to basic government services and benefits. It does mean, however, that the issue is not structural and can be dealt with on the basis of programs designed for groups of individuals in different parts of the country. In Canada, this is the situation for those speaking immigrant languages, those speaking Aboriginal languages, and Francophones living outside of Quebec. From the perspective of the indifferent state there is, therefore, no real normative difference between claims for language services coming from various languages. If there is no real basis to argue for specific language rights qua language, then decisions about language should be based on more basic less controversial rights claims such as the right to equality and the principle of liberal legitimacy, as I have defined it.

In states which contain more than one societal culture, or in multi-state groups which bring together states in which different languages dominate, the issue becomes whether or not the individuals living within the different societies *want* to accept a lessening of the degree of legitimacy possible, in return for other benefits. Given that different societal cultures function and will continue to function within a democratic polity, the option of not continuing within the state is always available. In *A Liberal Theory of Borders*, I argued that any group of citizens concentrated in a given geographical area have the unilateral right to secede from a given state, provided that they will not oppress their minorities who, in turn, if they meet the same conditions have the same right; I will not repeat the arguments here.

Democratic legitimacy and the formation of a community of communication requires that

there be society-wide deliberation about important political decisions. When large numbers of citizens do not speak the language in which the debate is largely conducted, the process will not be legitimate to the same degree. In Canada, for example, there are large numbers of Francophones, mainly concentrated in the functioning societal culture of Quebec, who do not speak English; there is a much larger number, both absolutely and relatively, of Anglophones who do not speak French. Anglophones and Francophones have their own separate media and cultural and professional institutions. It is only necessary to look at different daily newspapers to realize that the same issues are not discussed, and when they are, they are discussed from different perspectives. Therefore, democratic deliberation is more limited between the two societal cultures than it is within each one separately. When it does take place, the debate is often between a bilingual elite on the Francophone side and unilingual Anglophones on the other. (Certainly Anglophone politicians must now evidence some capacity to speak French if they are to be considered for the post of Prime Minister, but this is recent, has not always been the case, and “some capacity” is often liberally interpreted. On the other hand, it has meant that Quebeckers, those most likely to be bilingual, have had a virtual lock on the job of Prime Minister since 1968.) An elite may well put forward the interests, opinions and perspectives of the rest of society, but the debate is not as inclusive as it would be if conducted in a language all could understand. Dominance of a language always has advantages, but in a multilingual polity it brings real power. Wright is worth quoting at length on this point:

...in the democratic process, language is power, as true for the monolingual situation as for the plurilingual. In the monolingual situation, those with mastery of the language, able to put their arguments persuasively, will be advantaged; those with less mastery are disadvantaged perhaps by the fact that accent and usage mark them as outsiders of a cohesive group and certainly by the fact that lack of linguistic competence prevents them putting their arguments persuasively. In the plurilingual situation, the language issue becomes even more pivotal...pluralism means advantage for those with competent linguistic access to all the groups concerned, who can build bridges and coalitions, and customise their message. In a conflict bound situation, language is both a marker of difference and a limit to developing contacts...It may be a

banality to say that democratic processes take place more easily in a community of communication than across language cleavages. However, since these linguistic banalities seem to be often overlooked or ignored, it may be well worth labouring the point.<sup>70</sup>

It is a perfectly reasonable decision for Quebeckers to think that the decline in legitimacy is, from their perspective, more than offset by the other benefits of belonging to the larger society; it might also be a perfectly reasonable decision for them to decide otherwise.<sup>71</sup> In the case of the European Union the situation is similar, only more so. There are obviously benefits to be had—both economic and other—from participation in the European Union; there is also inevitably what some commentators have called “a democratic deficit”—i.e., decisions are debated and made by multilingual elites rather than by all citizens.

It is foolish to pretend that language doesn't matter, that a state can be perfectly neutral with regards to language; it does and it can't. As I discussed in Chapter 5, perfect neutrality with regards to religion is impossible; the best that can be hoped for is indifference. Even then, state decisions will weigh more heavily on some than on others and society will reflect the dominant belief system. This is all the more true with regard to language. But the problems confronted by linguistic differences are not resolved by postulating an individual or a group right to one's own native language. There will be costs to participating in a polity where another language dominates; there may also be benefits. Language may well be, as theorists like Taylor argue, more than just a means of communication, but it is certainly that too. There are sufficient problems created and issues raised for democratic theory and practice by language as 'just' a means of communication, particularly but not only in situations characterized by more than one societal culture; the indifferent state should adopt the position of scepticism and try to deal with these rather than looking beyond this to deep philosophical theories about language as constitutive of personal identity or as providing a framework of choice.<sup>72</sup>

### 7.2.3. Aboriginal Self-Government

“The central question in Aboriginal/non-Aboriginal relations in Canada following European settlement has always been”, say Cairns, ““Is the goal a single society with one basic model of belonging, or is the goal a kind of parallelism—a side by side coexistence—or some intermediate position?””<sup>73</sup> The three possibilities Cairns gives map nicely onto the distinction among benign neglect as traditionally theorized, cultural affirmation and the indifferent state.

The first view—the ultimate goal is a single form of citizenship—was given political expression in a 1969 federal White Paper.<sup>74</sup> The government proposed the repeal of the *Indian Act*, the amendment of the *British North America Act* to remove the section which singled out Aboriginals for special treatment, and the phase out of the federal Indian Affairs Branch; services would, in the future, be provided by the appropriate level of government, as they were for all other Canadians.<sup>75</sup> The White Paper reflected the liberal thinking of Prime Minister Trudeau and was supported by two broad rationales, one empirical and one philosophical. First there was the empirical claim that special treatment, special recognition if you will, of Aboriginals was a proximate cause of the social and economic inequality they suffered:

Trudeau firmly believed that Indian special status was a fundamental obstacle to Indian participation and to Indians’ acceptance as equals in the Canadian mainstream. He reasoned that by removing special status for Indians the racial psychology of Canadians would begin to change, and the ‘Indian problem’ would be transformed from one of racism to one of individual inequality of opportunity. He asked Indians to forfeit their special status, their land claims, and their aboriginal rights in exchange for a chance to share equally as *individuals* in Canada’s future.<sup>76</sup>

Second, the White Paper reflected the philosophical commitment to equal *individual* rights:

Canada’s rationale for choosing ‘individual rights’ over ‘peoples’ rights’ ...rests partly on the premise that the concept of ‘peoples’ rights’ deviates fundamentally from the Western-liberal principles underlying Canadian democracy that there must be no inequalities among citizens based on racial or ethnic status.<sup>77</sup>

Although the government’s proposal did have a great deal of support, including support from a

minority of Aboriginals, vigorous opposition from the majority of Aboriginals and their leaders led to the withdrawal of the White Paper.<sup>78</sup>

Today this approach is seen as assimilationist and attracts little academic support (although it probably has a great deal of support amongst non-Aboriginal Canadians); a notable exception is Tom Flanagan who sets out his reasoning in First Nations? Second Thoughts.<sup>79</sup> Flanagan's arguments in favour of an undifferentiated concept of citizenship confront, in a polemical way, the reasoning offered by proponents of the alternative view; he attacks what he calls "The Aboriginal Orthodoxy" which makes a variety of claims as to why self-government and special recognition are justified. Nevertheless, one can find the same two rationales that underlay the White Paper. Empirically, special treatment has, and self-government will, result in most Aboriginals becoming worse off relative to other Canadians:

...the aboriginal orthodoxy encourages aboriginal people to withdraw into themselves, into their own "First Nations," within their own "self-governments," on their own "traditional lands", within their own "aboriginal economies". Yet this is the wrong direction if the goal is widespread individual independence and prosperity for the aboriginal people...the political and professional elites will do well for themselves as they manage the aboriginal enclaves, but the majority will be worse off than ever.<sup>80</sup>

Of course if the goal is not *individual* prosperity, the empirical argument is irrelevant, but it is difficult to believe that economic prosperity is not at least one goal of most Aboriginals. Indeed, as we shall see, one of the arguments put forward by proponents of self-government is that it will in fact improve the economic and social lot of Aboriginals. From the philosophical perspective, Flanagan argues that:

...the aboriginal orthodoxy is at variance with liberal democracy because it makes race the constitutive factor of the political order. It would establish aboriginal nations as privileged political communities with membership defined by race and passed on through descent. It would redefine Canada as an association of racial communities rather than a polity whose members are individual human beings.<sup>81</sup>

Flanagan is making two separate but related points here: first, citizenship will no longer be equal and individual, but differentiated; and second, the differentiation will be based on race and ancestry.

Flanagan's position is thus very similar to that of the White Paper; parallel development would have negative empirical consequences, and it is philosophically incompatible with liberal democratic premises.

The second position supports parallel development through Aboriginal self-government, within the structure of the Canadian state.<sup>82</sup> Patrick Macklem summarizes five normative arguments in favour of this position: prior occupancy, prior sovereignty, treaties, self-determination, and preservation of minority culture.<sup>83</sup> He concludes that the claim of a right to self-government relies on all five justifications taken together:

Supported by a number of distinct but intersecting normative justifications, the right is best defended by a combination of arguments, each supporting a different dimension of its nature. Such a stance blunts critiques based on the contingency of normative thought by consciously refusing to ground the right of self-government in a single normative principle.<sup>84</sup>

Prior occupancy, prior sovereignty, treaties and self-determination as arguments for the right of self-government are all legal as well as normative assertions; I will not comment on their legal merits.<sup>85</sup>

From the normative perspective, these arguments rest uneasily in a Rawlsian justice framework; their historical nature would fit more readily into Nozick's framework of natural rights whereby the justice of an existing situation is totally dependent on past events:

...the holdings of a person are just if he is entitled to them by the principles of justice in acquisition and transfer, or by the principle of rectification of injustice...If each person's holdings are just, then the total set (distribution) of holdings is just.<sup>86</sup>

Very few contemporary Canadian supporters of Aboriginal self-government are likely to feel themselves at home in this paradigm. Kymlicka, for example, acknowledges the difficulties of relying on historical agreements (and, presumably, claims based on prior occupancy and prior sovereignty) for determining the justice—justice of the Rawlsian stripe—of Aboriginal claims:

...how should we respond to agreements that are now unfair, due to changing conditions? The land claims recognized in various treaties may be too much or too

little, given changes in the size and lifestyle of indigenous communities...To stick to the letter of historical agreements when they no longer meet [or may exceed?] the needs of minorities seems wrong.<sup>87</sup>

In the discourse of the “present-oriented” justice favoured by most contemporary liberals, therefore, the two strongest normative arguments supporting Aboriginal self-government are a presumed right to self-determination and a right to one’s own native culture.

I focus here on the culture argument which is central to the arguments of many Affirmationists. Kymlicka argues that special rights in the form of self-government and the power to impose restrictions on the actions of non-natives are justified in order to assure that natives have the same cultural security in which to exercise their individual autonomy as members of the majority culture enjoy just by the fact that they are the majority.<sup>88</sup> Boldt separates the legal definition of ‘Indian’ from the idea of ‘*Indian*’ as a cultural concept and argues that survival as ‘*Indians*’, survival as culturally distinct nations, is and always has been the actual goal of Indians and ‘*Indians*’.<sup>89</sup> The recognition and preservation of Aboriginals’ language and culture and the specific legal recognition of Aboriginals as members of cultural nations are also central to the logic of the policies advocated by the 1996 *Report of the Royal Commission on Aboriginal Peoples*.<sup>90</sup> Cairns summarizes this as follows:

The Commission links cultural survival directly to a land base. The “full exercise of Aboriginal nationhood” requires a “territorial anchor”...They also note that the retention of Aboriginal languages is gravely hampered by the absence of a “territorial” base. The centrality of land to culture and identity is a leading theme of Part 2 of the second volume, Restructuring the Relationship. Land is the “heartland of [Aboriginal] culture”. Accordingly sufficient land must be made available for cultural autonomy, as well as political autonomy and economic self-reliance.<sup>91</sup>

To accomplish the task of cultural protection, the self-governing entities require “the same range of law-making authority available to the provinces” with jurisdiction over “all matters that are of vital concern to the life and welfare of a particular Aboriginal people, its culture and identity.”<sup>92</sup> This

would include:

...the authority “to draw up a constitution, set up basic governmental institutions, establish courts, lay down citizenship criteria and procedures, run its own schools, maintain its own health and social services, deal with family matters, regulate many economic activities, foster and protect its language and culture, regulate the use of its lands, waters and resources, levy taxes, deal with aspects of criminal law and procedure, and generally maintain peace and security within the territory”, plus the regulation of some protected Aboriginal and treaty rights.<sup>93</sup>

The proposal for the creation of governments controlling relatively small territories, having very small populations, yet exercising very significant powers is ultimately justified by philosophical claims that culture is of special, indeed overarching, value. These claims are, as I have argued throughout this thesis, controversial at best. The position is also backed by the empirical belief of many that cultural collapse has significantly contributed to economic and social dislocation, and by the seemingly similar but in fact very different empirical belief that protecting and regenerating Aboriginal cultures will result in economic and social well-being.

When we compare and contrast the position put forward by supporters of an undifferentiated concept of citizenship for Aboriginals as proposed in the White Paper and by Flanagan with that of supporters of self-government such as Kymlicka, Boldt and the Royal Commission, we see that both make use of an empirical argument: self-government will lead to economic and social impoverishment or self-government will lead to an economic and social renaissance. Proponents of neither side are very forthcoming with systematic social science support for their positions. Culture is a sort of “throw-away” item for some—cultures come and cultures go, so what is the problem if Aboriginals lose their cultural base; can’t they just make the leap to the culture of the majority?—and an element of almost transcendental importance for the other. Both sets of arguments have a strong whiff of Hegelian Idealism about them: if something should be, if the idea of it is philosophically sound then empirical reality clearly must be that way as well. With the substitution of living for dead, the

arguments give weight to Keynes's claim that we all live in thrall to the ideas of some dead thinker.

I can only try to sketch the approach an indifferent state would adopt towards this question. Clearly, policy would be driven by a more detailed assessment of reality: "what are the likely impacts of any actual policy?" and not "what do our philosophical beliefs tell us the impact should be?" will be the question asked. Cultural preservation is not the normative trump that the Affirmationists argue, but neither is the natural desire of individuals to cleave to their own language culture without normative importance as the other side seems to think.

Flanagan argues that the loss of traditional cultures is to be applauded as a type of progress towards civilization.<sup>94</sup> Not all proponents of undifferentiated citizenship are, however, as doctrinaire. Trudeau, for example, acknowledged that Aboriginals might well feel strongly the loss of their culture:

We can go on treating the Indians as having special status. We can go on adding bricks of discrimination around the ghetto in which they live and at the same time perhaps helping them preserve certain cultural traits and certain ancestral rights. Or we can say you're at a crossroads—the time is now to decide whether the Indians will be a race apart in Canada or whether it will be Canadians of full status. And this is a difficult choice. It must be a very agonizing choice to Indian peoples themselves because, on the one hand, they realize that if they come into society as total citizens they will be equal under the law but they risk leaving certain of their traditions, certain aspects of a culture and perhaps even certain of their basic rights.<sup>95</sup>

Trudeau is putting forward the idea, anathema to many supporters of self-government and foreign to much normative thought, but central to the indifferent state—the recognition of the possible need for trade-offs. It may well be the case the choices must be made; a given culture may have to be left behind if other goods, the goods of economic prosperity and participation in a larger society offering a full range of possibilities, for example, are to be had. Some Aboriginal languages and cultures may be sustainable if sufficient resources are devoted to the task of doing so; others may already have too few members to survive at all. It is, I think, an empirical reality that even those which can survive are

unlikely to be full “societal” cultures in Kymlicka’s sense of offering the complete range of institutional structure and individual opportunity. It is also true, and this is an assertion that I will not document, that small culturally homogeneous political entities have at least the possibility of being hostile to individuals who do not share the normative and cultural assumptions of the majority within the entity. Such individuals may justifiably harbour anxieties as to their basic human rights if they are subject to the unrestricted rule of a small political entity; small units may also favour nepotism and bad government.<sup>96</sup> If culture is not a right, as I have argued, the level of resources a just society would provide to citizens who have an Aboriginal cultural identity will be limited. Whether or not such citizens want to use these resources in the way advocated by self-government advocates is an open question; supporters of Aboriginal self-government take the position that cultural preservation is a right (and often a duty) and therefore unlimited resources must be made available. Cairns describes in some detail how this approach led the Royal Commission not only to unrealistic conclusions but to ignore other approaches which may have the potential to do more for the welfare of many Aboriginals, particularly those who no longer live on their traditional territories.<sup>97</sup>

This does not necessarily mean, however, that self-government is not, sometimes, one possible solution to what everyone agrees is the gross social and economic disadvantages suffered by most Aboriginals. In some circumstances self-government and cultural protection may indeed have curative properties; in others they may not. Self-government may, sometimes, have the possibility of being economically sustainable; often it may not. Many Aboriginals may indeed put a very high value on the preservation of their cultural identities and this preference carries ( or should carry) political and normative weight. Self-government does not, however, mean that Aboriginal nations which choose it will form separate political entities; the resulting political units would not form independent states; they would continue to be part of Canada and require financial assistance from the Canadian state.

Many proponents of self-government, the Royal Commission being a significant example, ignore this fact and thus ignore the possibility that greater benefits *might* be had for Aboriginals by increased rather than decreased participation in Canadian politics. Cairns notes this fact:

What is missing in the Report, or perhaps more accurately rejected, is an analysis followed by proposals for the participation of Aboriginal individuals and nations in the competitive politics of Canadian society...

A major Commission premise is that Aboriginal peoples, at least those in nation-governments, can and should be insulated from the ups and downs of democratic politics...[there is]...an unwillingness to accord credibility to a possible civic empathy reaching across the divides of a fractured society.<sup>98</sup>

A democratic community committed to democratic debate requires that all citizens have the possibility to participate in all matters that concern them. Consequently, measures designed to increase the opportunities for Aboriginal perspectives to be heard and to make a difference in the broader Canadian political system must be a focus of state policies regardless of the degree of self-government that is ultimately adopted. If Aboriginals are assumed to speak only through their own governments, the problems and perspectives of the very many Aboriginals who do not and will never live in territories under self-government arrangements will go unheard.

In the same way that supporters of self-government ignore the possibility of other approaches which may yield positive results, proponents of a totally undifferentiated citizenship seem oblivious to the possibility that this approach ignores the wishes of many citizens. They also seem to dismiss, often on purely theoretical grounds, the argument that, sometimes at least, self-government may be a partial solution at least to social and economic disadvantage. The existing political boundaries and institutions of the Canadian state are morally arbitrary; neither is it plausible to argue that they are constructed to achieve maximum economic efficiency. There is no reason therefore to reject proposals for Aboriginal self-government as totally out of the question. A state indifferent to culture as a normative trump but sensitive to the view that culture *might* play a role in general well-being, a

state which takes the values and preferences of *all* its citizens seriously, a state that wants to encourage the participation of all its citizens in democratic debate, and a state which rejects philosophical dogmatism, would adopt a policy of self-government if necessary, but not necessarily self-government.

### Notes

1. Nino, The Constitution of Deliberative Democracy, 146.
2. Ibid., 145.
3. Due to space constraints I address only the Canadian case. For a history of citizenship practice in the United States see Rogers M. Smith, Civic Ideals (New Haven and London: Yale University Press, 1997); Kenneth L. Karst, Belonging to America: Equal Citizenship and the Constitution (New Haven and London: Yale University Press, 1989); and James H. Kettner, The Development of American Citizenship 1608-1870 (Chapel Hill: University of North Carolina Press, 1978). For the French experience, often considered to be a paradigm for the modern nation-state see Eugene Weber, Peasants Into Frenchmen (Stanford, California: Stanford University Press, 1976); Gerard Noiriel, The French Melting Pot, trans. Geoffroy de Lafocade (Minneapolis: University of Minnesota Press, 1996); and Catherine Audard, "Political Liberalism, Secular Republicanism: two answers to the challenges of pluralism," in Philosophy and Pluralism 163-175.
4. John Garner, The Franchise and Politics in British North America 1755-1867 (Toronto: University of Toronto Press, 1969).
5. See Darlene Johnston, "The First Nations and Canadian Citizenship," in Belonging, 349-367; Menno Boldt, Surviving as Indians (Toronto: University of Toronto Press, 1993); and Michel Morin, L'Usurpation de la souveraineté autochtone (Montréal: Boréal, 1997).
6. Samuel V. LaSelva, The Moral Foundations of Canadian Federalism (Montreal, etc.: McGill-Queen's University Press, 1996), 17.
7. A. I. Silver, The French Canadian Idea of Confederation (Toronto, etc.: University of Toronto Press, Second edition, 1977).
8. F. L. Morton "Group Rights Versus Individual Rights in the Charter: The Special Cases of Natives and the Quebecois" in Minorities and the Canadian State (eds.) Neil Nevitte and Alan Kornberg (Oakville: Mosaic Press, 1985), 72.
9. Samuel V. LaSelva, The Moral Foundations of Canadian Federalism, 25.

10. See J. Sharpe "Citizenship and the Constitution Act, 1867 and the Charter" for a discussion. Constance Backhouse, Colour-Coded (Toronto Buffalo London: University of Toronto Press, 1999), the subtitle of which is "A Legal History of Racism in Canada 1900-1950, provides, through six case histories, a good overview of the discrimination faced by minorities in the Canadian legal system.
11. Gilles Bourque et Jules Duchastel, L'Identité Fragmentée (Montréal: Editions Fides, 1996), 59.
12. Ibid., 59.
13. Cairns, Charter versus Federalism: The Dilemmas of Constitutional Reform (Montreal: McGill-Queen's University Press, 1992), 21.
14. For a critical view which laments this stress on rights see Gary Caldwell, "Evolution of the Concept of Citizenship (1945-1995): An English Canadian Perspective," in La nation dans tous ses états sous la direction de Yvon Lamonde et Gérard Bouchard (Montréal, Paris: L'Harmattan, 1997): 297-310. For a more balanced assessment see the works of Cairns, Sharpe and LaSelva cited above.
15. Cairns, "The Fragmentation of Canadian Citizenship," in Belonging, 185.
16. Alan C. Cairns, Reconfigurations. ed. Douglas E. Williams (Toronto: McClelland & Stewart, 1995), 182.
17. Stephen L. Carter, God's Name in Vain (New York: Basic Books, 2000) 160.
18. Spinner The Boundaries of Citizenship (Baltimore and London: The John Hopkins University Press, 1994), 56-58.
19. Michael Ignatieff, The Rights Revolution (Toronto: House of Anansi Press Limited, 2000), 70.
20. Rawls, Political Liberalism, 137.
21. Habermas, Between Facts and Norms, 107.
22. Joseph H. Carens, "Dimensions of Citizenship," The Philosophical Forum Volume XXVIII, Nos. 1-2 (Fall-Winter 1996-97): 112.
23. Ibid., 112.
24. Joseph H. Carens, Culture, Citizenship and Community (Oxford: Oxford University Press, 2000) 88.
25. Ibid., 89.
26. Parekh, "Equality, Fairness and Limits of Diversity", 292.
27. Carens, "Dimensions of Citizenship" 117.

28. This position is quite different from that of Barry as outlined in Culture and Equality. From the perspective of the indifferent state when it is a question of accommodating cultural and religious differences some inconsistency in the application of the law is inevitable. Also, individuals' preferences, including their cultural preferences must be given the weight their presence in the population merits. Barry, on the other hand, puts a very high premium on literal equality: "A simple model of rational decision-making, but one adequate for the present purpose, would present the position as follows: the rules define a choice set, which is the same for everybody; within that choice set people pick a particular course of action by deciding what is best calculated to satisfy their underlying preferences for outcomes, given their beliefs about the way in which actions are connected to outcomes. From an egalitarian liberal standpoint, what matters are equal opportunities. If uniform rules create identical choice sets, then opportunities are equal." 32.

29. Parekh, "Equality, Fairness and Limits of Diversity", 292.

30. Ibid., 292-293.

31. Spinner-Halev, Surviving Diversity 207-208.

32. Brighouse, "Against Nationalism", 371.

33. See, among others, Will Kymlicka, "Two Models of Pluralism and Tolerance," Analyse & Kritik 13 (1992): 33-56 and Multicultural Citizenship, Chapter 8; Chandran Kukathas, "Are There any Cultural Rights?", Political Theory 20/1 (1992): 105-39 and "Cultural Rights Again: A Rejoinder to Kymlicka," Political Theory 20/4 (1992): 674-680. Barry uses Kukathas position which argues for almost absolute freedom for illiberal groups to treat their members how they please to attack the idea any recognition of cultural groups. Barry, Culture and Equality, Chapter 4.

34. Sawitri Saharso, "Female Autonomy and Cultural Imperative: Two Hearts Beating Together," in Citizenship in Diverse Societies, ed. Kymlicka and Norman, 229.

35. Andrew Kernohan, Liberalism, Equality, and Cultural Oppression (Cambridge: Cambridge University Press, 1998), 112.

36. Saharso, "Female Autonomy and Cultural Imperative", 229.

37. Kernohan, Liberalism, Equality, and Cultural Oppression, 116.

38. Kymlicka, Multicultural Citizenship, 158.

39. Spinner-Halev, Surviving Diversity, 30.

40. Ibid., 204.

41. Ibid., 204-205.

42. Michael Oakeshott, The Politics of Faith & the Politics of Scepticism, ed. Timothy Fuller (New Haven and London: Yale University Press, 1996).

43. Ibid., 27.

44. Ibid., 31.

45. Ibid., 91-92.

46. Young, Inclusion and Democracy, 95.

47. Ibid., 105.

48. This section draws heavily on my “The Face of the State”, Political Studies Volume 47 Number 4 (September, 1999): 677-690. The conclusions and arguments have been somewhat modified to take account of conclusions reached in this thesis.

49. Kymlicka, Multicultural Citizenship, 177.

50. Ibid., 114-115.

51. Goldman v. Weinberger, 475 U.S. 503, 507-509 (1986), *U.S. Supreme Court Reporter*, 106, 1310-1326.

52. Ibid., 1311, 1316.

53. Barry reaches a different conclusion. Barry, Culture and Equality, 49. This is consistent with his position that state recognition of religion, as long as all religions are equally recognized, is not a problem. Barry thus has a different interpretation of neutrality than the one I have put forward.

54. A. Gualtieri, “Multiculturalism and modernity: the Sikh turban and the RCMP,” Policy Options (March 1995): 27.

55. Ibid., 27.

56. Bennett, “The Face of the State”, 687.

57. For an interesting critical discussion of the idea that one must ‘respect’ the religious convictions of others in the strong sense see Bernard Seve, “Les convictions d’autrui sont-elles un argument?” Le Débat No. 58 (January-February) 1990: 50-56. I came across this article after making the arguments just referred to.

58. Gualtieri, “Multiculturalism and modernity: the Sikh turban and the RCMP”, 27.

59. Bennett, “The Face of the State”, 689.

60. Discussions of this issue can be found in S. Wayland, “Religious Expression in Public Schools: Kirpans in Canada, Hijab in France,” Ethnic and Racial Studies 20/3 (July 1997): 545-61; A. Galeotti, “Citizenship and Equality,” Political Theory 21/4 (November 1993): 385-405; and N. Moruzzi, “A Problem with Headscarves”, Political Theory 22/4 (November 1994): 653-672.

61. I ignore cases where a given language may itself be imbued with religious significance.

62. Denise G. Reaume, "Official-Language Rights: Intrinsic Value and the Protection of Difference," in Citizenship in Diverse Societies, ed. Kymlicka and Norman, 245.

63. *Ibid.*, 245.

64. Taylor "The Politics of Recognition", 40.

65. See note 16 on 40-41 of *ibid.* for Taylor's view of the implication of the differences between himself and Kymlicka for language policy. Taylor holds that coercive policies to promote a language are acceptable even in the absence of immediate social problems caused by the potential disappearance of the language; Kymlicka holds the opposite view.

66. Denise G. Reaume, "The Constitutional Protection of Language: Survival or Security," in Language and the State, ed. David Schneiderman, 55.

67. *Ibid.*, 55.

68. O. De La Garza and Trujillo, "Latinos and the Official English Debate in the United States: Language is not the Issue" in Language and the State, 211.

69. See *Ibid.*, 216-218 for measures that the United States Courts have required in order to ensure the political participation of those who don't speak English.

70. Wright, Community and Communication, 155-156.

71. In A Liberal Theory of Borders, 117-119, I argued that Quebeckers have the right to unilaterally separate from the rest of Canada, for any reason that motivates a majority to want to do so. I also argued that the rest of Canada has the right to expel them from the existing Canadian state, if this position were supported by the majority. This is with my argument here; Quebeckers have a unilateral right to decide to separate because language differences prevent the formation of what they consider a legitimate community of communication. Nothing in this argument, however, implies that either side has the unilateral right to set the terms of any separation. As I argued in A Liberal Theory of Borders, the borders of the resulting states would themselves be subject to the principle of majority vote. In addition, such items as the division of joint assets and liabilities would have to be settled equitably before any such separation could occur.

72. Barry's position on language is similar to the one I just sketched. He takes, however, a much stronger position than I do on the need to force integration into the language of the majority: "...except where each linguistic group maintains an entire economy and polity within a state (as in Belgium, Switzerland and Canada), the maintenance of linguistic diversity is a recipe for condemning successive generations to dead-end jobs (or unemployment) and for denying them the ability to take part in public affairs except as voting-fodder for a politics of sectional interest. The rest of society....has a legitimate interest in all its citizens having the capacity to be economically productive and being equipped to take part in its national politics as participants in a single national discourse. Democratic states that still have an open future have every reason for pursuing the course that leads to a linguistically homogeneous polity." Barry's obsession with the need for a strong central government to enforce equal, as he defines it, treatment of all citizens leads him

to this position: “Even where all linguistic groups count, as in Switzerland, Belgium and Canada, the linguistic communities tend to carry on parallel conversations confined largely to their own members. The disruptive potential of this is currently illustrated by...Canada..[even if Canada survives as a single country]...the price is that the state is hollowed out as all tasks of government that can be devolved are lost to it. Thus, Quebec has already succeeded in opting out of institutions (such as social insurance) that are otherwise Canada-wide, and blocks any moves towards greater centralization of such matters as tertiary education and the environment that might well be enacted by the rest of Canada in the absence of Quebec.” 228, 226. It is worth noting, as to his second point, that I have never heard any serious complaint that Quebec’s separate pension system is in any way problematic; the two systems are, as far as I am aware, fully portable, and benefits are the same.

73. Alan C. Cairns, Citizens Plus (Vancouver and Toronto: UBC Press, 2000), 47.

74. Canada, Statement of the Government of Canada on Indian Policy, presented to the First Session of the Twenty-eighth Parliament by the Honourable Jean Chretien, Minister of Indian and Northern Development (Ottawa: Department of Indian Affairs and Northern Development, 1969).

75. Cairns, Citizens Plus, 51. In reality, as Cairns notes, the changes would mostly have effected status Indians rather than all Aboriginals.

76. Boldt, Surviving As Indians, 22.

77. *Ibid.*, 84.

78. See Cairns, Citizens Plus, 53-61 for a discussion of the support for the proposal from different segments of society.

79. Tom Flanagan, First Nations? Second Thoughts (Montreal and Kingston: McGill-Queens University Press, 2000).

80. *Ibid.*, 195.

81. *Ibid.*, 194.

82. There is very little argument in favour of outright independence. Most supporters of Aboriginal self-government intend that it be, as I noted, accompanied by large resource transfers for the Canadian state. Claims for full independence would raise different practical and theoretical issues.

83. Patrick Macklem, “Normative Dimensions of an Aboriginal Right of Self-Government,” Queens Law Journal 21 (1995): 173-219.

84. *Ibid.*, 219.

85. For discussions of the legal arguments see Michel Morin, L’usurpation de la souveraineté autochtone (Montréal: Editions Boréal, 1997) and “La situation des peuples autochtones en droit international et Canadien: une vue d’ensemble,” in ed. Nicolas Léviat, Minorités et organisation

de l'état (Brussels: Bruylant, 1998): 631-662; John Borrows, "Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government," Kent McNeil "The Meaning of Aboriginal Title", and Michael Asch and Norman Zlotken, "Affirming Aboriginal Title: A New Basis for Comprehensive Claims Negotiations", all in ed. Michael Asch, Aboriginal Treaty Rights in Canada: Essays on Law, Equity, and Respect For Difference (Vancouver: UBC Press, 1997), 155-172, 135-154, and 208-229; and Johnston, "The First Nations and Canadian Citizenship," in Belonging: 349-367.

86. Robert Nozick, Anarchy State and Utopia (New York: Basic Books, 1974) 153. For a discussion of this perspective as it relates to American Aboriginal land claims see David Lyons, "The New Indian Claims and Original Rights to Land," in Reading Nozick, ed. Jeffrey Paul (Totowa [New Jersey]: Rowman and Littlefield, 1981), 355-379.

87. Kymlicka, Multicultural Citizenship, 120.

88. Kymlicka, Liberalism Community and Culture, Chapter 9.

89. Boldt, Surviving as Indians, xiii, 39-47. See also J. Edward Chamberlain, "Culture and Anarchy in Indian Country" in Aboriginal Treaty Rights in Canada: Essays on Law, Equity, and Respect for Difference, ed. Asch, 3-37.

90. Canada, Report of the Royal Commission on Aboriginal Peoples, 5 volumes, (Ottawa: Canada Communication Group Publishing, 1996). Cairns analyses in some detail the way in which culture drives the Commission's report. See Citizens Plus, Chapter 4.

91. Cairns, Citizens Plus, 123-124; Cairns is citing from the Commission's report.

92. *Ibid.*, 139; Cairns is citing from the Commission's report.

93. *Ibid.*, 139; Cairns is citing from the Commission's report.

94. Flanagan, First Nations? Second Thoughts 30-35.

95. Pierre Trudeau, excerpts from an August 8, 1969 speech in Vancouver cited in Johnston, "The First Nations and Canadian Citizenship," 364. I interpret Trudeau as referring to basic *legal* rights rather than fundamental individual rights. In other words, I do not understand him to be putting forward the philosophical view that Aboriginals have a normative right to culture, as the Affirmationists argue, that they will be giving up.

96. Cairns, a rather sympathetic critic, describes the problem as follows: "Many [Aboriginal] communities are poor, anomic, and characterized by social breakdown and malaise...in too many Aboriginal communities, or among subgroups within Aboriginal communities, violence has become so pervasive that there is a danger of it coming to be seen as normal.'...Many women, in particular, are fearful that self-government will not reduce the high incidence of sexual and physical abuse that now prevails in many communities...In her discussion of sentencing circles, Carol La Prairie notes that their advocates often falsely assume 'a consensus in values and the widespread acceptance of traditional norms' in Aboriginal communities....Self-government will lay bare the internal complexity and heterogeneity of many status Indian communities. According to a

recent report, Indian communities are riven with cleavages between status and non-status residents, and between those who are and those who are not members—a different distinction. Further the significance of kinship combined with the importance of the public sector as a source of employment and benefits—including housing—will strain against universalistic standards. Citizens Plus, 111-112. Flanagan, a totally unsympathetic critic, goes into great detail as to the problems inherent in very small governmental units in First Nations? Second Thoughts, Chapter 6.

97. Cairns, Citizens Plus, 122-136.

98. Ibid., 143. See also John Borrows, “Landed Citizenship,” in Citizenship in Diverse Societies, ed. Kymlicka and Norman, 326-342. Borrows argues that: “To preserve and extend our participation with the land it is time to talk also of Aboriginal control of Canadian affairs. Aboriginal people must work individually and as groups beyond their communities to enlarge and increase their influence matters that are important to them.” 328-329.

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