

‘CULTURES’ AND CULTURAL PROTECTION

JOHANNES RUST NIEMAND

Abstract: This article aims to show that the concept of cultures as discrete entities is crucial for arguments for the protection of cultures. In this regard, Will Kymlicka’s arguments for cultural protection are critically examined. We show that important aspects of his arguments, particularly the distinctions between 1) external and internal protections and 2) cultural content and structure, as well as 3) the notion of attachment to culture, can only succeed if one can conceive of cultures as distinct entities. In our concluding remarks, we suggest that this is a notion worth investigating. In particular, we suggest that the combination of delineation in terms of historical conflicts (as opposed to cultural essence) and the presence of real exit possibilities may allow for the delineation of cultures.

Key words: Kymlicka; cultural protection; attachment; multiculturalism; culture.

This article sets out to show that the concept of cultures as discrete entities is crucial for arguments for the protection of cultures. Cultural protection refers to measures implemented by the State to ensure a culture’s continued existence. Such measures are typically controversial, as they allegedly involve the impingement of traditional liberal rights, such as special voting rights, residency rights and language policies.

Although we tackle the problem of multiculturalism within the field of political philosophy, we argue that the dilemma is informed by notions of culture that originate in fields such as cultural anthropology and social psychology. Though there are many different views by different authors from different fields, they appear to converge on the dynamic, fluid nature of culture, and resist any essentialist notions of culture. Our approach is multi-faceted: with regard to the political-philosophical problem we broadly support Will Kymlicka’s type of liberalism, though with some criticism. Our conception of culture—developed fully elsewhere (cf. Niemand, 2013)—draws on insights from systems theory, Clifford Geertz’s symbolic anthropology and Social Identity Theory. We do not develop the idea systematically here, as the main thesis is to show the need Kymlicka’s argument has for delineable cultures. However, we conclude the article with remarks on how cultures may be delineable notwithstanding their dynamic nature and without falling into the trap of essentialism.

We have selected Kymlicka’s argument, as we consider it to be the strongest amongst those arguing for cultural protection. We will demonstrate that Kymlicka’s theory needs

a concept of cultures as distinct entities in order to be successful. After our discussion of Kymlicka, some critical considerations regarding liberal alternatives to Kymlicka's theories will follow. However, for ease of denotation, and seeing that Kymlicka identifies himself with some version of the liberal approach, we first offer a very brief working definition of what we understand by the term 'liberal'.

In this article, reference to the term 'liberal' does not signify a unified approach to culture. Rather, these ideas are found in a wide variety of arguments that resist communitarian and value-pluralist notions. The more specific arguments of each author subsumed under the term liberal is therefore not in the scope of this article. Accordingly, we call certain approaches to multicultural issues 'liberal' when they emphasise the following two related points: a) individual freedom, and b) a neutral public place. By emphasising individual freedom, and thus the individual's freedom to choose his/her own goods to strive for, liberal approaches favour a neutral public space. This is a space that does not ascribe to any particular good, but rather enables each individual to strive for his/her own good. The liberal approach, as we use the term here, would, for instance, be against public schools having a particular religious character and against religious doctrines being used as basis for anti-gay marriage laws. It would, on the other hand, be in favour of laws on religious freedom.

Having provided this very brief exposition, we hasten to note that Kymlicka's arguments are not necessarily 'un-liberal', nor need it be considered 'communitarian'—Kymlicka himself resists the label (cf. Kymlicka, 1990). They can be regarded as in dialogue with these liberal notions, and may actively seek to demonstrate that they are broadly compatible with them. In particular, Kymlicka pits his brand of liberalism against an individualist or atomist liberalism. The latter sees the individual's public life as detached from his/her cultural background. His/her chosen way of life is to be followed privately. The public sphere can *allow* him/her to choose this way of life, but cannot *promote* it over others. As discussed below, Kymlicka disagrees on the individual's detachment from his/her culture. He aims to show that one can be liberal without being an individualist. He argues that, considering an individual's attachment to his/her culture, protection of cultures is necessary to ensure that people from different cultures have the same opportunity to choose their way of life.

Will Kymlicka's arguments

Kymlicka (1989) proposes arguments for the protection of cultures based on the principle of equality. He thus attempts to show that the protection of cultures is consistent with a liberal framework.

Kymlicka's arguments focus on equality as a basis for group rights. Accordingly, the protection of certain cultural rights may actually serve to increase equality. This, in our view, is the chief strength of Kymlicka's argument, as it potentially avoids the problem of cultural infringement on individual rights. However, as we will show below, his argument is not without problems.

Kymlicka (1989, p.162) adopts a model similar to that of John Rawls and Gerald Dworkin in his attempt to justify the protection of cultural communities. Rawls argues that liberal citizenship provides the conditions needed to decide our goals and goods. As such,

citizenship is a structure that functions as a precondition for individual freedom. Kymlicka extends this idea to ‘cultural structures’. As we will discuss below, the idea of cultural structures is vague and (on some points) problematic. In Kymlicka’s argument, a cultural structure represents a ‘context of choice’ (1989, pp. 164-166; 1998, p. 96), a framework within which individuals pursue their goals.

In this regard, Kymlicka makes an argument similar to Charles Taylor’s on rich forms of (personal) autonomy. As with Taylor’s horizons of significance (cf. Taylor, 1991, p. 37 and Taylor, 1994, pp. 25-73), contexts of choice are required to make choices valuable, not mere expressions of whim.

Kymlicka’s extension of the liberal model to cultural structures thus forms the basis of his equality argument. Where members of a dominant group can pursue their goals with a cultural structure in place, members of a minority group have to expend effort and resources to maintain their cultural structures, leaving them little energy or few resources to pursue the goals and lifestyle they would want to (Kymlicka, 1989, p. 189). They are thus disadvantaged purely a result of something they had little control over, e.g. having been born into that culture. So, while ‘differences in resources may (legitimately) arise as a result of ... choices’ (Kymlicka, 1989, p. 186), the inequality with regard to cultural structures is not the members of the minorities’ responsibility and they should be accommodated just like people with disabilities should be accommodated (p. 86).

In this regard, one has to note that differences in goods and resources may also be the result of fair competition, and one’s success in this may often relate quite strongly to factors that are not of one’s choice, but are due to chance: intelligence, for instance, is not distributed evenly amongst people. Kymlicka’s analogy of a minority culture with a disabled person adds to his view that the individual is strongly attached to his/her culture. We will discuss the notion of attachment to one’s culture below. For now, we first turn to some of the most important concepts and distinctions employed in his arguments.

Kymlicka distinguishes between ‘national minorities’ and (minority) ethnic groups in poly-ethnic states. National minorities are groups that were already present in the country when the current state was founded, have a prior history of self-government, and share a common language and culture. These groups, according to Kymlicka, have stronger claims to such special group representation and self-government rights. Other ethnic groups that do not meet these criteria, e.g. immigrant groups who enter the country voluntarily after its foundation, have a weaker claim to special rights. The distinction between national minorities and other minorities and the stronger rights afforded to the former, hinges on the notion that national minorities were once independently functioning societies. They had all the necessary institutions to provide those members of the community a cultural structure, a backdrop against which they could pursue their goals and strive for their goods. Moreover, as they were conquered or colonised, they did not cede their autonomy voluntarily. Other minorities are accommodated without needing to call for special ‘cultural rights’. The cultural rights of these groups may be seen as a logical extension of traditional non-discrimination, i.e. each individual’s right not to be discriminated against based on any superficial characteristic (such as skin colour) or conception of the good life (Raz, 1995, p. 172).¹

¹ Kymlicka recognises that refugee communities are not adequately treated by the above distinctions.

At this point we turn to Kymlicka's conception of culture and cultural structures. At times, his use of these terms can be vague and confusing. For instance, culture is sometimes used as equivalent to cultural structure, and sometimes not:

In one common usage, culture refers to the character of a historical community. On this view, changes in the norms, values, and their attendant institutions in one's community ... would amount to loss of one's culture. However, I use culture in a very different sense, to refer to the cultural community, or cultural structure, itself. On this view, the cultural community continues to exist even when its members are free to modify the character of the culture, should they find its traditional ways of life no longer worth while (Kymlicka, 1989, pp. 166-167).

Kymlicka thus introduces the distinction between the character (or content) of a culture, and its structure. But what is the nature of this structure, if not a certain character, a value system or way of life (Kymlicka, 1998, p. 91) represented by that culture? Ostensibly, he equates the cultural structure, as context of choice, with the cohesiveness of a community (see above quote, also Kymlicka (1998, pp. 91, 96).

Where Kymlicka links the cohesiveness of a cultural community with a shared way of life (1998, p. 27, see also 1998, p. 33)² it is not clear what the relationship between a culture's content and structure is, or if it makes sense to make the distinction in the first place. We would argue that his definition in terms of a community is problematic. It means that the demise of a culture would take the form of, for example: 'There are no more Zulu's', instead of 'The Zulu way of life is extinct'. In our opinion, the latter represents a more accurate view of culture, while the former confuses cultures and ethnic groups. Following Geertz (1975, p. 89), we hold that the term culture pertains not to people or practices, but to the *meaning* certain practices and ways of doing have to people. Those people that identify themselves with a certain culture, (often in the face of conflict, as we discuss below), through their self-identification, all claim a certain measure of life orientation, i.e. *meaning*, by virtue of being part of that culture's way of life, though they may disagree as to the exact content of this way of life and the value of specific practices within it.

By making reference to shared 'culture' and language, Kymlicka's theory exposes itself to the charge of essentialism. However, his equality argument does suggest an interesting possibility of addressing the problem of delineation, one that is worth expanding on in further research (cf. Niemand, 2013). For the moment, it is worth noting that Kymlicka's criteria for a national minority goes some way toward providing the possibility of delineating that group *historically*. Here Henri Tajfel's Social Identity Theory is particularly enlightening. He describes how group identity is elicited sometimes by simply dividing people into groups, even when such a division is quite arbitrary (Tajfel et al., 1971, pp. 149-177; cf. Tajfel, 1974). Conflict can create such a division quite effectively and at the moment of the conflict, the group can be delineated by the set of all those identifying with it. When

² Elsewhere, where Kymlicka discusses 'societal cultures', he further specifies that a societal culture 'is a territorially concentrated culture centred on a shared language that is used in wide variety of societal institutions' (Kymlicka, 1998, p. 27). Following his definition of national minorities, it would imply that national minorities once had functioning societal cultures. Here again we see the notion of a cohesive community (in its territorial concentration), which is also linked to some sort of shared value system or way of life.

applied to a multicultural society, we see that the minority group ceded its sovereignty (involuntarily), through conquest or colonization. These conflicts create a dividing line between the conquerors and the conquered, so that a definition of the group can take the form of 'those people whose sovereignty was taken away from them', avoiding formulations that require that they share certain characteristics. The *internal* disunities and opposition (that is, between the group's members) prior to that moment of conflict does not disappear, but are thoroughly sidelined. One could liken this to the supporters of *provincial* sport teams defining themselves in terms of their *national* team when the contest is with an international competitor. Moreover, and unlike the sports allegory we just used and unlike the arbitrary groups Tajfel sometimes used in his experiments, this conflict has permanent effects, as it continues to maintain the conquered group's marginalisation, thereby arresting an otherwise fluid and dynamic group identification. As such, defining cultures in terms of historical conflicts holds some promise in avoiding the problem of essentialism.

However promising as such a suggestion may seem, the problem of internal differences still poses a number of challenges. However sidelined past disunities may be, how should the *current* heterogeneity be addressed?

In this regard, Kymlicka distinguishes between internal restrictions and external protections. The latter allows the continued existence of the society represented by that national minority.

Here the aim is to protect a group's distinct identity not by restricting the freedom of individual members, but by limiting the group's vulnerability to the political decisions and economic power of the larger society (1998, pp. 62-63).

As such, Kymlicka argues that external protections increase equality and are consistent with a liberal perspective. Internal restrictions, on the other hand, are at odds with liberal theory as it impinges on individual autonomy. Flowing from the external/internal distinction is the idea that a culture can change internally: the choices individual group members make can change the content of a culture, while external protections provide the security that the culture continues to exist at all. Put differently, *that* it exists is to be protected, while the content (such as values, norms, institutions) that defines it should be allowed to change as a result of the free interaction of the individual group members. Moreover, the protection of individual freedoms provide for the possibility of exit from the group, that is, that any person may choose to leave the group.

As an example of external protections, Kymlicka discusses measures applied to Aboriginal communities in Canada. Aboriginals in Canada are protected by different types of external protections, depending on the nature of the threat to their community. In southern Canada, where population is dense and land scarce, the aboriginal community required arrangements whereby non-Indians would not have the right to own or stay on Indian lands. In northern Canada, rich in mineral resources, the influx of temporary workers could lead to the spending of public money on, conceivably

movie theatres, dish antennas ... even a Las Vegas style resort. Since many aboriginal people in the north are dependent on short-term work projects due to the seasonal nature of most of the economic activity in the area, such a policy [where all residents, regardless of permanence

can vote - JRN] would force them to move into localities dominated by whites, and to work and live in another culture, in a different language....To guard against this, aboriginal leaders have proposed a three-to-ten-year residency requirement before one becomes eligible to vote for, or hold public office, and a guaranteed 30 per cent aboriginal representation in regional government with veto power over legislation affecting crucial aboriginal interests (Kymlicka, 1989, p. 147).

External protections such as these then serve to protect a cultural structure. This means that, just like members of the majority, members of that culture can pursue their way of life without having to expend resources on ensuring the continued existence of their context of choice. However, this implies that the individual would be at a disadvantage when having to function in someone else's context. S/he can't simply move from one to the next. This attachment of an individual to his/her culture is a crucial aspect of Kymlicka's equality argument. Kymlicka asserts: "People *are* bound, in an important way, to their cultural communities." (1989, p. 175). He then goes on to quote various research studies describing the disruption when people are forced to sever this attachment.

Kymlicka has been criticised for his assertion that people have a deep bond with their culture. Leighton McDonald (1997, p.10), for instance, points out that this assertion is an *empirical* claim. Moreover, it is one that can be falsified by just one person asserting something like: "Well, I don't". The studies he discussed also do not demonstrate a *necessary* bond, only that many have experienced it as disrupting.

However, Kymlicka's arguments can avoid this problem by a somewhat modified assertion that is more difficult to contradict: *some* people have this bond and have the need to maintain it. Those asking for the protection of their culture would simply lay claim to enjoy the opportunity to live within one's own culture, the same opportunity that members of the majority culture enjoy whether they value it or not. These people are thus not treated fairly because their way of life does not enjoy the same opportunity to flourish as other people's do. Moreover, those members of the minority who do not share this attachment have the option of exiting. Therefore according to an equality argument, the continued existence of a person's culture (his/her context of choice) may be protected on grounds of equality: members of that culture would be treated fairly, because they would enjoy the same opportunity to practice their way of life as members of the majority do. This line of thinking, however, is only successful when one assumes the type of attachment to a culture Kymlicka does.

But how would one conceptualise cultural attachment if the delineability of cultures is questionable? One of the core characteristics of attachment, as we use the term, is that it reduces the uncertainty the environment holds for any entity trying to survive in that environment. Attachment reduces this uncertainty by introducing a measure of permanence over time. One example would be the infant's attachment to his/her mother, where the infant plays and explores his/her world, even leaving his/her mother's field of vision, yet still returning, certain of her continued presence. For the concept of cultural attachment to make sense, a similar type of permanence over time would need to be demonstrated, while still retaining the dynamic and interactionist nature of culture.

A number of other criticisms of Kymlicka's argument are pertinent. Firstly, though he is expressly opposed to the infringement of individual rights, some of the external measures Kymlicka proposes do have the effect of curtailing certain individual freedom and rights

(such as voting rights in the examples discussed above). His distinction between external protections and internal restrictions does not succeed in addressing this problem.

Furthermore, his distinction between internal restrictions and external protections re-introduces the distinction between structure and content, which (as discussed above) still encounters some problems that need to be solved: if a culture's content can change, how does it stay true to itself and continue to exist as that same culture? Put differently, even if it is agreed that one is at a disadvantage when forced to adapt in another culture or to adopt a new culture, this apparent unfairness only makes sense when, firstly, one assumes that the minority culture, if left undisturbed, would have flourished and would have, through the years, remained recognizable as *that culture*. To establish this would require a conception of culture that enables it to change in certain respects, yet remain identifiable as that culture. When does a change in content possibly threaten the continued existence of the structure, and when is a change that is easily accomplished? Moreover, without a satisfactory answer to the question of how a certain character can be retained despite internal changes, it is unclear what exactly people are attached to, i.e. what disadvantage they suffer if their attachment is severed.

Secondly, if one is to think of an unfair breach of attachment between an individual and his culture, one needs a conception of a fair breach of attachment. The idea of exit possibility may, at first glance, form the basis of such a conception: the individual breaks ties with this culture voluntarily as opposed to being forced to do so by conquest. However, for exit possibility to be a meaningful choice, some exposure to a competing culture needs to be assumed. This once again raises the questions: how much exposure is enough? When is competition between cultures fair?

Moreover, if culture is ultimately fluid, these disadvantages could ultimately be overcome—maybe not in this generation but perhaps in the next—prompting us to consider whether some changes may need to be enforced quicker, rather than protected against. Likewise, if culture cannot be delineated and if some relationship between this delineation and its character cannot be established, an individual's attachment to his/her culture is not something that can be legislated for: if culture is ultimately fluid and dynamic, disruptions to and losses of attachment, as well as the discomfort of having to adapt to a more dominant cultural structure, are inevitable. It would be like being attached to water.

Therefore, Kymlicka's arguments require a solution to the problem of the delineation of cultures. Along with the abovementioned problem of the delineation of a culture, the problem of how the identity of a culture would relate to its character, the 'way of life' that presumably holds its members together (although members may disagree on this as well) and how this character can change without the 'culture' losing its identity, also need to be addressed. Though one can find ways of delineating cultures by constructing some form of boundary, such solutions are at best superficial if they cannot show how the culture that resides 'within' these boundaries manages to stay true to itself.

The abovementioned problems, we suggest, require us to conceptualise a culture as being able to restructure or reorganise *itself*. This means that we would have to conceive of its reorganisation not merely as the wishes and acts of certain *individuals* of that culture, but of the culture as a whole. If we were to conceive of such a reorganisation as merely the expression of the will only of certain individuals within that culture, it would once again

expose problems with delineation, which in turn, make it difficult to delineate the scope of external protection. It would make it difficult to answer a question such as: “*whose* culture would be threatened by changes to certain elements?”

The liberal alternative

Given the problems Kymlicka and others face, is a return to basic liberal concepts not the most satisfying solution? A liberal approach retains a certain simplicity and elegance to it and intuitively (at least to the “Western” observer) appears to be well-suited for accommodating differences and ensuring fair co-inhabitancy of public spaces. However, there is a growing awareness of the cultural conditioning involved in traditional liberal approaches and important liberal concepts also forces us into further investigation. Whatever the defence for a liberal position may be, it still rests on certain notions that are themselves culturally conditioned or at least contingent. One such notion is the importance placed on procedural rights.

This criticism (depending on one’s conceptualization of culture) is not necessarily damning and one does not need to deny the “Western” and cultural origin of liberal procedures to address it successfully.

Richard Rorty (1989, pp. 84-85; 1991, p. 206), for instance, represents a pragmatic approach to such problems. He does not deny the “Western” origin of such liberal procedures, nor does he attempt to defend them on the grounds of any form of final reason. He simply argues that it is the best system (seen from the perspective of liberal democracy he espouses) we have at present that also provides for each person to live the life s/he chooses. So, although such procedures might be “ethnocentric”, it is an ethnocentrism that allows value pluralism.

Habermas, on the other hand, argues that procedures need to be intersubjectively validated, that is, agreed upon by the different parties. Participants necessarily have to assume the possibility of consensus; if they do not, their interaction would cease to be rational debate. This follows from his theory of communicative action, which proposes that participants in an argument cannot but aim at rationally achieved consensus, free of domination, or else they commit a performative contradiction (Habermas, 1986, p. 259). Thus, even when we debate procedures, the debate has to presuppose the autonomy of its participants. Procedures that protect this autonomy, then, do not merely represent a “Western” substantive good, but are necessary goods to which participants in arguments need to ascribe.

To a large extent, we agree with Habermas’ approach with regard to the importance of an assumption of the possibility of consensus. However, we believe it is possible for two participants to reach axiomatic³ differences, fundamental disagreements about premises that are insurmountable by further reasoning and dialogue. Nevertheless, presupposing that an argument will end in this insurmountable difference is counterproductive, because much can be agreed upon before that point is reached.

³ Principles or assumptions are regarded as axiomatic when they themselves cannot be proven by reason, because they are the assumptions or principles that underlie all our subsequent arguments. An example from Mathematics reads as follows: ‘Any real number added to a real number is also a real number.’

Where the liberal approach does not work, it is necessarily not accepted by one of the parties in a conflict, and, as such, has the character of being *imposed* on that party, not agreed upon by both. Likewise, even Habermas' argument may serve to close up (rational) debate, rather than opening it. Please note that we do not propose that valuing autonomy is to be abandoned. We merely suggest that, to enter this assumption into a debate without putting it up for scrutiny, serves to exclude from the beginning the notion of a culture that is to be protected alongside individual freedoms. Consequently, the dialogue stops there and then. To enable dialogue between parties in multicultural conflicts, the relationship between personal autonomy and cultural protection will need to be investigated.

Concluding remarks

Given the weaknesses of the liberal approach, it is important to note that, if one can conceive of cultures as distinct, delineable entities, then arguments such as Kymlicka's would be strengthened considerably. In fact, he would have shown his approach to be consistent with a liberal approach and liberal thought would have been successfully adapted to deal with multicultural situations and the more traditional, restricted form would be shown to be inadequate. We reiterate that the success of his arguments hinges on how culture is conceptualised. The challenge is therefore to develop a conceptualization of culture that makes it possible to delineate cultures, at the same time allowing for disagreement within the culture and without reducing the culture to a false essence. At first glance, this might seem an impossible task, like squaring a circle. However, it is only impossible if we assume that delineation has to occur with reference to some essence. In this regard, defining and delineating cultures in terms of historical conflicts holds some promise. Moreover, if individuals who are thus included in a culture but who do not wish to be included, can be protected by real exit possibilities, then the consideration of cultural rights need not violate individual autonomy. Furthermore, the presence of real exit possibilities could also go some way towards conceiving of cultures retaining (or not retaining) their character, not by force but by the dynamic interaction between its members. An autocratic determination of the true essence of a culture would, for instance, not hold sway for very long if members are truly free to vote with their feet and exit. These are possibilities worth investigating, even if only to continue the dialogue between liberal and non-liberal worldviews.

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Stellenbosch University,
Merriman Ave,
Stellenbosch
Western Cape
7600
South Africa
E-mail: hanruniemeand@gmail.com