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Citation

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I

I shall advance the thesis that if there are any moral rights at all, it follows that there is
at least one natural right, the equal right of all men to be free.
— H.L.A. Hart, "Are There Any Natural Rights?"

At least since the American civil rights movement, many people have
become more aware of the harm suffered by ethnic or cultural minorities
laboring under discriminatory practices or inequities which have developed
over decades, if not centuries. The conditions of the American black and the
American Indian, the Canadian Inuit, the New Zealand Maori, and the
Australian Aborigine have been the subject of various administrative and
legislative initiatives. And the political claims of the Basques in Spain, the
French Canadians in Canada, and the Tamils in Sri Lanka have been gaining
wider prominence. In more recent times, however, one particular concern has
begun to receive greater attention: the cultural health of some of these ethnic
minorities. Increasingly, the impact of the larger society on the cultural
integrity and durability of ethnic minorities has come to be a matter of debate,
if not concern. And to a significant extent, it is cultural integrity which now
forms the basis of the moral claims, and political demands, advanced by these
minorities. In particular, some of those who describe themselves as "indige-

nous peoples" swamped by settler cultures — Polynesian Fijians, Maori New Zealanders, and American Indians, for example — call not simply for improvements in their economic conditions but for protection of their cultural practices.

These developments have not been without significance for political theory, and liberal theory in particular. In the light of this modern "ethnic revival," many have come to question the relevance of liberal political thinking. Liberalism, with its stubborn insistence on viewing society in individualist terms, is said to be incapable of coping with the phenomena of group loyalty and cultural reassertion. The disdain for liberal thinking is forcefully expressed by Anthony Smith in the introduction to his study of *The Ethnic Revival*:

> The dissolution of ethnicity. The transcendence of nationalism. The internationalisation of culture. These have been the dreams, and expectation, of liberals and rationalists in practically every country, and in practically every country they have been confounded and disappointed. . . . Today the cosmopolitan ideals are in decline and rationalist expectation have withered. Today, liberals and socialists alike must work for, and with, the nation state and its increasingly ethnic culture, or remain voices in the wilderness.[1]

Much of this criticism has emerged in the wake of a growing conviction that there is no prospect of individuals abandoning their particular loyalties for a universalist humanism. Thus one has to accept the conclusion "well known to great masses of people for a long time but not to generations of elite humanist scholars and strivers for human perfectibility: namely, that our tribal separatenesses are here to stay. . . . They are not about to dissolve into any new, larger human order."[2] The problem with liberalism, it is held, is that its individualist outlook leads it to neglect those communal interests which are so much more important than liberals recognize. Vernon Van Dyke, for example, has argued in a series of papers that "the liberal emphasis on the individual precludes a proper theory of the state, which suggests in principle that liberalism cannot be trusted to deal adequately with the question of status and rights for ethnic communities."[3] Frances Svensson, drawing on Van Dyke's work, similarly complains that "liberal democratic theory, in its almost exclusive emphasis on individual rights and its neglect of communal interests, has created a context in which no balance has been possible between the claims of individuals and multidimensional communities."[4]

Reservations about liberalism have been expressed by its friends as much as by its detractors. John Gray, for example, suggests that liberal thinking makes a fatal error in regarding people not as "Sikhs or Poles, Palestinians or Israelis, Blacks or Wasps, but merely persons, rights-bearing (and, doubt-

less also, gender-neutral) ciphers."[5] Indeed, he maintains that "the sustaining myths of liberal modernity — myths of global progress, of fundamental rights and of a secular movement to a universal civilization — cannot be maintained even as useful fictions in the intellectual and political context of the last decade of our century."[6] For Gray, this means that we should abandon liberalism and look to other, more coherent ways of theorizing.

A somewhat different response comes from Will Kymlicka in his important study, *Liberalism, Community, and Culture*. Kymlicka too concedes that liberalism, "as commonly interpreted . . . gives no independent weight to our cultural membership, and hence demands equal rights of citizenship, regardless of the consequences for the existence of minority cultures."[7] Yet he proposes to reinterpret the liberal tradition, to show that a respect for minority rights is indeed compatible with liberal equality: "Post-war liberal clichés need to be rethought, for they misrepresent the issue, and the liberal tradition itself."[8]

In this essay, I propose to take issue with these writers. I shall argue that while we are right to be concerned about the cultural health of minority communities, this gives us insufficient reason to abandon, modify, or reinterpret liberalism. Far from being indifferent to the claims of minorities, liberalism puts concern for minorities at the forefront. Its very emphasis on *individual* rights or *individual* liberty bespeaks not hostility to the interests of communities but wariness of the power of the majority over minorities. There is thus no need to look for alternatives to liberalism or to jettison the individualism that lies at its heart. We need, rather, to reassert the fundamental importance of individual liberty or individual rights and question the idea that cultural minorities have collective rights.

It ought, however, to be emphasized that to take this view is not to imply that groups or cultural communities do not have interests or, indeed, that particular peoples cannot have legitimate grievances which need to be addressed as a matter of justice. The primary thesis advanced here is not that groups do not matter but rather that there is no need to depart from the liberal language of *individual* rights to do justice to them.

To defend this thesis, I begin, in the next section, to put the case for the liberal standpoint, taking issue with those who challenge its individualist premises. The third section then turns to develop my case in response to those who wish to see liberal theory modified to take cultural claims into consideration, after which the fourth section takes on the question of what such a view amounts to and attempts to account for the place of cultural minorities in liberal society. The fifth section reviews various important objections before the conclusions of this essay are given a final formulation.

II

Liberal political theories, it is widely held, assume or argue that the good society is one which is not governed by particular common ends or goals but provides the framework of rights or liberties or duties within which people may pursue their various ends, individually or cooperatively. It is a society governed by law and, as such, is regulated by right principles. These are principles of justice, which do not themselves presuppose the rightness or betterness of any particular way of life. Although liberals are not commonly skeptics about questions about the good life, they emphasize that no one should be forced to accept any particular ideal of the good life. The liberal response to the multiplicity of religious and moral traditions in modern society has thus been to advocate toleration, as far as possible, of different ways of living.

This response has received a variety of justifications from liberal thinkers, who have founded their conclusions on claims of natural right or arguments about original contracts or calculations of utility. Despite this variety, there is a core of common assumptions to be found in liberal arguments.[9] First, liberal theory is *individualist* in asserting or assuming the moral primacy of the person against the claims of any social collectivity; second, it is *egalitarian* because it confers on all such individuals "the same moral status and denies the relevance to legal or political order of differences in moral worth among human beings"; and third, it is *universalist* because it affirms the moral unity of the human species and accords "a secondary importance to specific historic associations and cultural forms."

These characteristically liberal assumptions — particularly the first and third — have long been the targets of criticism from communitarian quarters. Typically, these criticisms have made the point that liberalism's individualist premises are unacceptable because any conception of an individual presupposes some view of society and community since individuals are social beings. This objection has acquired a more distinctive flavor, however, in an argument that groups occupy an intermediate position between the individual and the state and deserve special moral recognition. Vernon Van Dyke in particular has objected that "modern liberal political theorists focus on relations between the individual and the state as if no groups count that are intermediate."[10] He takes to task for this neglect a variety of contemporary theorists from John Plamenatz and John Rawls to Carole Pateman and Hanna Pitkin.[11] Making the point that, as a matter of political fact, ethnic groups of all sorts are indeed accorded "rights" in many countries, Van Dyke offers a number of reasons why it is important that, "alongside the principle that

individuals are right-and-duty-bearing units, a comparable principle should be accepted for the benefit of ethnic communities."[12] His argument is worth noting.

Stressing the importance of individual and equal treatment, Van Dyke argues, promotes the view that it is improper even to think about differences of race except to combat discrimination and so tends to promote blindness to group differences and an assumption that societies should properly be regarded as homogeneous.[13] If group differences were recognized and communities were accepted as right-and-duty-bearing units, there would be a greater chance of developing a coherent set of doctrines to respond to real-world problems. Theory would be more sensitive to collective sentiment and group loyalties.[14] This would make a difference to the fate of "nondominant" communities and to the psychological health of their members. Individualism, however, "combined with the usual stress on personal merit, is destructive of cultures other than the majority or dominant culture."[15] If ethnic communities were accepted as rights-and-duty-bearing, it would become easier to take "affirmative action" to compensate communities which have suffered discrimination. This would supply a "more satisfactory doctrinal basis for some actual practices."[16] For example, in the case of the Old Order Amish in Wisconsin, the Supreme Court gave the community the right not to send their children to public schools beyond the eighth grade on the basis of the first amendment guarantee of freedom of religion. But while the Amish won this fight for the survival of their community, their victory left untouched the presumption "that nonreligious ethnic communities do not have a comparable right."[17] Van Dyke concludes by suggesting that, in principle, granting status and rights to ethnic communities should extend justice by giving minorities their due. This is conducive to peace, for justice is one of the conditions of peace.[18]

The point of all this, it should in fairness be emphasized, is not to belittle the idea of individual rights. Van Dyke's concern is to ensure that the "right of the community to preserve itself"[19] is not neglected. His suggestion is that many individual rights should be understood as flowing from the community's right of self-preservation. For example, individual freedom of expression can often be interpreted in terms of the right of a linguistic community to preserve its language. But taking individual rights as exhaustive of all rights would not allow us to defend the interests of communities, and particularly their interest in self-determination. This view tends to see communities as needing to be assimilated rather than liberated and to regard permanent communalism as unacceptable.[20]

Van Dyke, like many others, is right to say that liberal theory subordinates the claims of the community to those of the individual. But subordination is not neglect. What needs to be established now is that liberal theory does have good reason for elevating the individual, yet does not go so far as to disparage the interests of communities — interests which cannot be reduced to the interests of individuals. That is the task of the rest of this section. It ought now to be made clear, however, that in advancing the arguments that follow I am in fact not only defending liberal theory *simpliciter* but developing *a particular* liberal theory.

Contrary to a commonly held and often expressed view, liberal theory does not begin with the assumption that the world is made up of isolated, atomistic individuals. (Even the most individualistic of thinkers, Hobbes, was moved to put forward his political theories by the actions of particular groups or interests in society — the warring factions during the upheavals of the 1640s.) Individuals invariably find themselves members of groups or associations which not only influence their conduct but also shape their loyalties and their sense of identity. There is no reason for any liberal theorist to deny this. What has to be denied, however, is the proposition that fundamental moral claims are to be attached to such groups and that the terms of political association must be established with these particular claims in mind.

The primary reason for rejecting the idea of group claims as the basis of moral and political settlements is that groups are not fixed and unchanging entities in the moral and political universe. Groups are constantly forming and dissolving in response to political and institutional circumstances. Groups or cultural communities do not exist prior to or independently of legal and political institutions but are themselves given shape by those institutions.[21] As Donald Horowitz has put it, "Ethnic identity is not static; it changes with the environment."[22]

The importance of this point cannot be too strongly emphasized. Scholars, like Anthony Smith, who are critical of liberalism have insisted on "the 'naturalness' of ethnicity" and criticize recent scholarship for starting "from the premiss that nations and nationalism are peculiarly modern phenomena, and that there is nothing 'natural' or inborn about national loyalties and characteristics."[23] Yet the work of Horowitz shows quite clearly that this criticism is mistaken. There is an "interactive quality" to the variables related to group identity: culture, boundaries, conflict, and the policy outcomes of conflict.[24] Ethnic identity has a contextual character: Group boundaries "tend to shift with the political context."[25]

For example, in the former Indian state of Madras, cleavages within the Telugu population were not very important. Yet as soon as a separate

Telugu-speaking state was carved out of Madras, Telugu subgroups quickly emerged as political entities. Similarly, many ethnic groups were the product of subgroup amalgamation in the colonial period in Asia and Africa. The Malays in Malaysia, for example, emerged as a "distinct" group only after colonialists created specific territories out of loose clusters of villages and regions; much the same can be said for the Ibo in Nigeria and the Moro in the Philippines. Indeed, Horowitz suggests that some "such groups were 'artificial' creations of colonial authorities and missionaries, who catalyzed the slow merger of related peoples into coherent ethnic entities. They did this by the way they categorized those they encountered and by the incentives they established to consummate the amalgamation."[26] Of course, it was not only colonialism that shaped these identities. The Malays, for instance, despite the fact that their numbers were drawn from island peoples as far away as Sumatra, Sulawesi, Borneo, and Java, as well as Malaya, developed their highly cohesive identity partly because of the appearance of *Chinese* immigrants.[27] But the important point remains: Group formation is the product of environmental influences, and among these environmental factors are political institutions.

This is not to say that culture is unimportant, but it is not fundamental, even for the constitution of group identity. Legal rights can themselves be important determinants. In the late 1960s in Assam, Bengali Muslims found it advantageous to declare Assamese their language in part to become eligible for land reserved for indigenes.[28] As Horowitz observes, "Culture is important in the making of ethnic groups, but it is more important for providing *post facto* content to group identity than it is for providing some ineluctable prerequisite for an identity to come into being."[29]

Now, the causes of group formation do not render group interests illegitimate. But they do point to why it may not be appropriate to try to answer questions about what political institutions are defensible by appealing to the interests of existing groups. Often, those interests exist, or take their particular shape, only because of certain historical circumstances or because particular political institutions prevail and not because they are a part of some natural order. There is no more reason to see particular interests as fixed than there is to see particular political arrangements as immutable. Liberal political theories thus typically take as their starting points the existence of a plurality of interests—often competing, if not in actual conflict—and ask how or by what principles a political order might adjudicate between or accommodate competing claims. But recognizing that many interests, cultural or otherwise, might have well-founded claims, liberal theory tries to

look at the problem of divining political rules from a standpoint which owes its allegiance to no particular interest — past, current, or prospective.

For this reason, liberal theory looks at fundamental political questions from the perspective of the individual rather than that of the group or culture or community. Such collectives matter only because they are essential for the well-being of the individual. If the condition of the community or the culture made no difference to the life of any individual, then the condition of the collective would not matter.[30] None of this implies that there is such a thing as "the individual" in the abstract. Individuals do not exist in the abstract any more than interests do. But interests *matter* only because individuals do. Thus, while groups or cultures or communities may have a character or nature which is not reducible to the nature of the individuals who inhabit them, their moral claims have weight only to the extent that this bears on the lives of actual individuals, now or in the future.[31] Liberal political theories rest on the assumption that while the interests given expression in groups, cultural communities, or other such collectives do matter, they matter ultimately only to the extent that they affect actual individuals.

So groups or communities have no special moral primacy in virtue of some natural priority. They are mutable historical formations — associations of individuals — whose claims are open to ethical evaluation. And any ethical evaluation must, ultimately, consider how actual individuals have been or might be affected, rather than the interests of the group in the abstract. It is not acceptable to evaluate or choose political institutions or to establish legal rights on the basis of the claims or interests of cultural communities because those very institutions or rights will profoundly affect the kinds of cultural communities individuals decide to perpetuate or to form. Groups may generate entitlements, but entitlements can also create groups. Historical priority does not confer on a community the right to continued existence (even though it may be the source of other valid claims — to which I return later).

This last (unqualified) sentence would be challenged immediately by a defender of cultural rights, raising the following objection. If institutions or legal rights are to be established, why not choose conservatively and protect existing cultural communities? Granted that the choice of laws and institutions can indeed alter the composition of groups, is there not a case for establishing rights that protect actual cultural communities on which individuals depend? After all, the breakdown or disintegration of such communities, bringing social dislocation and anomie, is scarcely a good — for group or individual. So, there appears to be good reason to recognize the right of groups to guard themselves against the intrusions of the outside world and to determine their own destiny.

Yet this case is not as straightforward as it appears, for reasons that have much to do with the mutable nature of cultural communities. In recognizing this, it is important to note not only that group composition changes over time but that most groups are not homogeneous at any given moment. Within cultural communities there may be important differences and conflicts of interest. Internal divisions can take two forms: divisions between subgroups within the larger community and divisions between elites and masses, which may have quite different interests. Differences of interest between subgroups might be observed, for example, in the experiences of groups such as the Yoruba of Nigeria, the Lozi of Zambia, and the Bakongo of Zaire, Angola, and Congo (Brazzaville). In each of these cases, the group was formed in response to internal differentiation among subgroups, many of whom fought each other. It was only in opposition to colonialism that their leaders sought to minimize subgroup cultural differences, standardize language, and take other measures to assimilate the many interests into a united association with political strength. Although many of these movements of assimilation met with great success, subgroup identities have remained, and in some cases, subgroup conflict persists.[32]

The more important conflict of interest within groups, however, is that between the masses and elites. This conflict is starkly revealed within ethnic cultural communities confronted by modernization. Under these circumstances, elites have "distinctive interests that relate to modernity: good jobs, urban amenities, access to schools, travel, prestige."[33] In some cases, there is no doubt that elites use their advantages to further their personal ends, in some cases manipulating ethnic sentiment in pursuit of their career aspirations.[34] In others, however, matters are more complex. Aboriginal representatives on the National Aboriginal Consultative Committee established by the Australian Commonwealth government were often suspected by their people of succumbing to "white" patronage, even when they were innocent.[35] To some extent this was the product of ignorance: In many cases, Aborigines did not understand agreements entered into on their behalf by their "representatives." And it is not always easy for those uninitiated into the ways of bureaucracies to understand how difficult it is to avoid being "swallowed up."[36] Yet these cases also reveal the real gap that sometimes exists between the interests of the elite and the interests of the mass of group members.

This poses a particular dilemma for cultural minorities seeking self-determination within the larger society and wishing to preserve their cultural integrity. To be self-determining in the larger society requires a measure of political power, and this means becoming involved in the political processes of the nation. Elites from minority cultures must invariably mix with the

educated elites from other minorities and from the dominant society. But in this process, the interests of the minority elite become further removed from those of their cultural community. If their cultural community itself undergoes changes, however, the prospect of preserving cultural integrity diminishes.

The cultural community and its elite may, of course, share a common interest in the symbolic standing of the group as a whole. If both gain from the growth of collective self-esteem, then the masses might welcome the prestige derived from the success of wealthier or higher-status group members. One Malay leader has, in fact, defended policies of preferential treatment in these terms, arguing that although the benefits fall disproportionately to the Malay elite, the masses, knowing of Malay group success, enjoy a vicarious satisfaction more highly prized than personal material gain.[37] Yet while it may indeed be the case that "the distribution of prestige is a real and rational object of conflict"[38] among ethnic groups, securing this goal can serve to heighten the divisions within the community. Indeed, it could be argued that the masses may be more interested in jobs and economic progress whereas the elites, who already enjoy these material benefits, have a greater interest in symbolic traditionalism.[39]

From a liberal point of view, the divided nature of cultural communities strengthens the case for not thinking in terms of cultural rights. Cultural groups are not undifferentiated wholes but associations of individuals with interests that differ to varying extents. So within such minorities are to be found other, smaller minorities. To regard the wider group as the bearer of cultural rights is to affirm the existing structures and therefore to favor existing majorities. Minorities within a cultural community which might over time have formed quite different coalitions with other interests may find that their interests are to a significant degree subject to control by the larger rights-bearing community. More important, it restricts the opportunity of minorities within the group to reshape the cultural community, whether directly or through its interaction with those outside the group. Liberal theory is generally concerned to avoid entrenching majorities or creating permanent minorities.

To say this is to recognize that it is not always the case that the entire cultural community is eager, or even willing, to preserve cultural integrity at any price. Often, individuals or groups within the community wish to take advantage of opportunities which have produced the unintended consequence of changing the character of the community. Thus, for example, while Aboriginal elites have argued that land rights granted to Aborigines as a people ought to reserve those lands for Aboriginal communities in perpetuity,

some individual Aborigines argue that those communities should be free to use the land as an economic asset to be bought and sold.[40] Here, there is undeniably a conflict between the interests of the cultural community as a whole — at least as conceived by elites within it — and those of (groups of) individual members. Liberal theory does not look to give precedence to the views of those who claim to speak in the interests of the cultural community as a whole, even if they are in the majority, because the interests of the minority cannot be discounted.

In the end, liberalism views cultural communities more like private associations or, to use a slightly different metaphor, electoral majorities. Both are the product of a multitude of factors, and neither need be especially enduring, although they can be. The possibility that they might be, however, does not justify entrenching the interests they manifest.

One significant objection raised here is that this individualist view is fundamentally an assimilationist one which is destructive of minority cultures because it ignores their need for special protection. The most forceful assertion of this criticism of liberalism has been Van Dyke's, and it is worth expounding more fully. Liberal doctrine, he argues, is at least integrationist if not assimilationist and finds permanent communalism unacceptable. The trouble is, permanent communalism may be exactly what some groups, notably "indigenous peoples," actually want.[41] Liberal "ideology," however, is inclined to "break up reservations, destroy tribal relations, settle Indians on their own homesteads, incorporate them into the national life, and deal with them not as nations or tribes or bands but as individual citizens," despite the fact that "many Indians do not want to be integrated into mainstream society."[42] Van Dyke quotes from the manifesto of the Indians who made the Longest Walk (1978): " 'How do we convince the U.S. government to simply leave us alone to live according to our ways of life? . . . We have the right to educate our children to our ways of life. . . . We have the right to be a people. These are inherent rights. . . . Our fight today is to survive as a people.' "[43]

All this leaves Van Dyke in no doubt that the individualist perspective, as he characterizes it, "gives an advantage to members of the dominant group" who find it easier to establish rapport with those with influence and power and "tend to obtain disproportionate representation in the various elites."[44] (Elite members co-opted from minorities, he adds, tend not to be "representative," often because they have abandoned the culture from which they sprang.[45]) Moreover, individualism, "combined with the usual stress on personal merit," tends to be destructive of minority cultures because the schools are likely to promote the dominant culture and undermine all others. The minority person is likely to find his culture disparaged: "The whole

attitude is an attack on the existence of the group and the self-respect of its members. It means oppression, and perhaps exploitation as well."[46]

But this outlook is mistaken both in its characterization of the liberal view, and in its assertions about liberalism's implications. There is no reason why liberals should press for assimilation or integration of cultures or find communalism unacceptable. Nor is there a good case, from a liberal point of view, for destroying tribal communities to force Indians to enter the mainstream of national life. This is not to say that no liberal thinker has defended views which might be used to justify such intentions, but there is no good reason to suppose that any liberal must go along with them. On the contrary, there is every reason, from a liberal point of view, to accede to the Indians request to "leave us alone to live according to our ways of life." What follows is the outline of a liberal point of view which does precisely this, without invoking claims about group rights.

From a liberal point of view the Indians' wish to live according to the practices of their own cultural communities has to be respected not because the culture has the right to be preserved but because individuals should be free to associate: to form communities and to live by the terms of those associations. A corollary of this is that the individual should be free to dissociate from such communities. If there are any fundamental rights, then there is at least one right which is of crucial importance: the right of the individual to leave a community or association by the terms of which he or she no longer wishes to live. Cultural communities should, then, be looked on in this way: as associations of individuals whose freedom to live according to communal practices each finds acceptable is of fundamental importance.

This view appears to place great weight on the nature of cultural communities as *voluntary* associations. To some extent, this is so — but to a very small extent. Most cultural communities are not voluntary associations in any strong sense. Membership is usually determined by birth rather than by deliberate choice, and in many cases, there is no option of entry for those born outside — even though, as we have seen, groups will seek to redefine the boundaries of membership (and of group identity) when circumstances are propitious. Cultural communities may be regarded as voluntary associations to the extent that members recognize as legitimate the terms of association and the authority that upholds them. All that is necessary as evidence of such recognition is the fact that members choose not to leave. Recognition in these austere terms would, of course, be meaningless without the individual having one important right against the community: the right to be free to leave. That has to be the individual's fundamental right; it is also his only fundamental

right, all other rights being either derivative of this right, or rights granted by the community.[47]

This view of the rights of the individual gives a great deal of authority to cultural communities. It imposes no requirement on those communities to be communities of any particular kind. It does not require that they become in any strong sense "assimilated," or even "integrated" into the mainstream of modern society. It in no sense requires that they be liberal societies; they may indeed be quite illiberal. There is thus no justification for breaking up such cultural communities by, for example, driving tribes off their lands or forcibly resettling them. The wider society has no right to require particular standards or systems of education within such cultural groups or to force their schools to promote the dominant culture. If members of a cultural community wish to continue to live by their beliefs, the outside community has no right to intervene to prevent those members acting within their rights.

Yet at the same time, this view does not give the cultural community any fundamental right. The basis of the community's authority is not any right of the culture to perpetuation, or even existence, but the acquiescence of its members. Those members have the inalienable right to leave — to renounce membership of — the community. This right is more potent than it might at first appear because it implies that in many circumstances, individuals within the cultural community are free to leave *together or in association with others* and to reconstitute the community under modified terms of association. Cultural communities without the broad support or commitment of their members will thus wither; yet communities within which there are only isolated pockets of discontent with its cultural norms might well prevail.

This version of the liberal individualist standpoint seeks, then, to strike a balance between the claims of the individual and the interests of the community. It recognizes the existence of cultural groups but denies that they are in any sense "natural," regarding them rather as associations of individuals drawn together by history and circumstance. As such, they have certain acquired interests, but these are in no way equivalent to the interests of all their members. The mutability of such communities reflects their nature as associations of individuals with different interests. The interests of the community as a whole and the interests of particular (groups of) individuals within may well conflict. The liberal individualist view outlined here, by regarding the group as having its moral basis in the acquiescence of individuals with its cultural norms, rejects the idea that the group as such has any right to self-preservation or perpetuation. Nonetheless, by seeing the right of association as fundamental, it gives considerable power to the group, denying

others the right to intervene in its practices — whether in the name of liberalism or any other moral ideal.

But the thesis, as it stands, will be subjected to numerous objections from defenders of cultural rights and liberals alike and needs to be refined and given more careful expression. Some especially prominent criticisms are addressed in the following sections.

III

Criticisms of the standpoint expounded here come from two general directions: from those who think culture has been given too little recognition and from those who think it has been given too much. These objections have to be met. Somewhat fortuitously, they both appear in Will Kymlicka's recent study, *Liberalism, Community, and Culture,* that argues for a liberalism which gives special weight to claims of cultural membership. So I shall try to meet the criticisms in question by addressing some of the arguments advanced in Kymlicka's work.

Kymlicka maintains that liberals have been wrong to regard the idea of collective rights for minority cultures as theoretically incoherent and practically dangerous.[48] In his view, liberals can and should embrace the idea of cultural rights without denying liberalism's individualist premises — individualist premises of the kind I discussed earlier.[49] The right way to look at the issue, he suggests, is not to see a conflict between individual rights and group rights, or "respect for the individual" and "respect for the group." The real conflict, which does indeed pose a dilemma, is between two kinds of respect for the individual. Individuals might be due respect as members of a distinct cultural community — in which case "we must recognize the legitimacy of claims made by them for the protection of that culture" — or they might be due respect as citizens of the common political community — in which case "we must recognize the importance of being able to claim the rights of equal citizenship."[50] The demands of citizenship and the demands of cultural membership can pull in different directions because "differential citizenship rights may be needed to protect a cultural community from unwanted disintegration."[51] For Kymlicka, the solution to this dilemma lies not in rejecting liberalism but in reconciling minority rights with "liberal equality," thereby providing an individualist justification of differential (cultural) rights.[52] And this means showing "that membership in a cultural community may be a relevant criterion for distributing the benefits and burdens which are the concern of a liberal theory of justice."[53]

In trying to show this, Kymlicka in effect mounts a case for thinking that culture has been given too little recognition in liberal theorizing. Certainly, the protection he wishes to give cultural communities exceeds that given them by the liberal theory advanced earlier in this essay. So the two considerations on which he defends cultural rights call for careful examination. The first consideration is the value of culture and cultural membership. Culture matters, Kymlicka argues, because the range of options open to us to choose is determined by our cultural heritage. It is within cultures, through examples and stories, that we learn about the kinds of life it is possible to lead, and we "decide how to lead our lives by situating ourselves in these cultural narratives, by adopting roles that have struck us as worthwhile ones, as ones worth living (which may, of course, include the roles we were brought up to occupy)."[54] Cultural structures are thus important because they provide "the context of choice."[55] The fundamental reason for supporting cultural membership is "that it allows for meaningful individual choice."[56] Liberals should be concerned with the fate of cultural structures because it is "only through having a rich and secure cultural structure that people can become aware, in a vivid way, of the options available to them, and intelligently examine their value."[57] Concern for the cultural structure thus "accords with, rather than conflicts with, the liberal concern for our ability and freedom to judge the value of our life-plans."[58]

The second consideration on which Kymlicka bases his defense of cultural rights is liberal equality. Cultural minorities, such as the Inuit, he argues, suffer a particular disadvantage inasmuch as they "can face inequalities which are the product of their circumstances or endowment, not their choices or ambitions."[59] Their cultural communities are often undermined by decisions of people outside the community. Cultural minorities, compared with the majority culture, operate in unequal circumstances, and this, Kymlicka insists, is the case for all members of such minorities; thus "all Inuit people face the same inequality in circumstances."[60] His conclusion is that "only if we ground collective rights in unequal circumstances can we distinguish the legitimacy of Aboriginal rights from the illegitimacy of attempts of assorted racial, religious, class, or gender groups to gain special status for their preferred goals and practices."[61]

Although Kymlicka's outlook is also a liberal individualist one, his position is clearly quite different from that advanced in this essay. While I have tried to play down concern for group rights by describing cultural communities as having their legitimate basis in individual freedom of association, Kymlicka wishes to emphasize group interests and sees them as having their basis in liberal concerns about choice and equality. Like Van

Dyke, he is motivated by a concern for the plight of ethnic minorities, and "indigenous" peoples in particular. His theory is, however, untenable both from a liberal point of view and from the perspective of someone concerned with the interests of cultural minorities.

The problem stems from the attempt to justify cultural rights, which need to be given some foundation consistent with liberal theory. Kymlicka's foundation is essentially an argument about the primary importance of individual *autonomy*. Cultural rights protect autonomy. They do this inasmuch as they look to guarantee the stability of the cultural environment within which the individual is able to exercise the capacity to make meaningful choices. Unfortunately, many cultures do not place such importance on choice. This is an ideal which finds especial favor among the adherents of the liberalism of J. S. Mill. As Kymlicka himself notes, "For Mill the conditions under which people acquired their ends were important: it mattered whether their education and cultural socialization opened up or closed off the possibility of revising their ends."[62] Yet many cultures, including those of a number of the "indigenous peoples" referred to, do not place such value on the *individual's* freedom to choose his ends. Often, the individual and his interests are subordinated to the community. Moreover, the individual might be expected to accept uncritically the long-standing practices of the cultural group. Critical reflection need play no part in their conceptions of the good life.

Consider, for example, the following account by Kenneth Maddock of the nature of Australian Aboriginal society:

> On Anderson's view of freedom we would have to say either that Aboriginal society traditionally was servile in spirit or that it was not the kind of society in which attitudes of servility and independence could arise. Now the absence of opposition and criticism cannot be explained by an absence of inequality or disenfranchisement. It seems rather that explanation must be sought in the Aboriginal acceptance of a utopian conception of society according to which an order having been laid down all that remains to do is to conform to it. This anti-historical view of how things have come to be as they are is bound up with the disjoining of creativity, which is imputed to the powers, and tradition, fidelity to which is urged upon humans. When ideas like this take root — and the initiatory process is calculated to ensure they do — all prospect of opposition and criticism vanishes.[63]

Here we have a society in which the values of order and conformity are inculcated through ritual, with creativity and critical reflection on the fundamental nature of individual commitment to these values thereby extinguished. If these practices are to be allowed to continue in the wider society, the justification cannot be one which emphasizes the importance of preserving the context of choice. If choice and critical reflection are most highly

valued, then it is cultural interference rather than cultural protection that is required. If we disdain interference, then choice ceases to be a consideration.

Having embraced choice as critically important, Kymlicka is drawn down the path of interference. This is revealed in his response to the problem of the Pueblo Indians raised by Svensson.[64] The problem arose when some members of this culture, following conversion to Christianity, chose to withdraw from certain communal functions while continuing to demand their "share" of community resources. The result was the ostracizing of, and denial of resources to, those apostates who had thus violated Pueblo religious norms. Objecting to this treatment, the Christian converts appealed to the "Indian Bill of Rights" (Title II, added to the 1968 Civil Rights Act) for religious protection. Other Indians objected to the extension of the Indian Bill of Rights to the Pueblos as destructive of their traditions, in which religion was an integral part of community life. Kymlicka's response is that "the restriction on religious liberty *couldn't* be defended on [his] account of minority rights" because, first, "there is no inequality in cultural membership to which it could be viewed as a response" and, second, the "ability of each member of the Pueblo reservation . . . to live in that community is not threatened by allowing Protestant members to express their religious beliefs."[65] To complaints by scholars like Svensson that for many in the Pueblo, "violation of religious norms is viewed as literally threatening the survival of the entire community,"[66] Kymlicka responds that the only real evidence for such a claim is the dislike that the majority feels for the dissident practice. In this regard, he likens the complaint to Lord Devlin's claim that the acceptance of homosexuality undermines the English community. The mistake made here by people like Devlin, he suggests, is that of seeing anything that changes the *character* of the community as *undermining* the community.

Kymlicka makes the basis for his own view very clear: "If the goal is to ensure that each person is equally able to lead their chosen life within their own cultural community, then restricting religion in no way promotes that."[67] He is in no doubt that were the theocracy ended, each majority member of the Pueblo would still have "as much ability to use and interpret their own cultural experiences," and that "supporting the intolerant character of a cultural community undermines the very reason we had to support cultural membership — that it allows for meaningful individual choice."[68]

Yet the important question is, why make "meaningful individual choice" the basis for supporting cultural membership — particularly when this value is not recognized as such by the culture in question? Many cultural minorities besides the Pueblo Indians do not place individual autonomy or choice high in the hierarchy of values. To the extent that they have had to go so far as to

defend their cultural integrity against invasion or exploitation, they have invoked the independence of their community's way of life and the importance of retaining their *identity*.[69] By insisting that the cultural community place a high value on individual choice, the larger society would in effect be saying that the minority culture must become much more liberal.

Kymlicka does not reject this conclusion, arguing that "finding a way to liberalize a cultural community without destroying it is a task that liberals face in every country, once we recognize the importance of a secure cultural context of choice."[70] Yet from the perspective of persons seeking to preserve the group identity or the cultural integrity of the minority community, this is surely unacceptable. First, they might raise an objection that Hume noted: that it is all too easy to judge societies by standards they do not recognize.[71] More important, however, they would surely object that to elevate individual choice and suggest the course of "liberalizing" their cultures "without destroying them" is to fail to take their culture seriously. If their culture is not already liberal, if it does not prize individuality or individual choice, then to talk of liberalization is inescapably to talk of undermining their culture. Culture is not simply a matter of colorful dances and rituals, nor is it even a framework or context for individual choice. Rather, it is the product of the association of individuals over time, which in turn shapes individual commitments and gives meaning to individual lives — lives for which individual choice or autonomy may be quite valueless. To try to reshape it in accordance with ideals of individual choice is to strike at its very core.

Furthermore, it is not clear why it should be permissible to intervene in existing cultural practice even if the result is not the destruction of the culture but "merely" the reshaping of its "character." What many cultural communities are asking for, as the American Indian manifesto quoted earlier suggests, is to be left alone.[72] Moreover, they wish the reshaping of their community to take place, as far as possible, by the terms set by their own practices. If the change in character takes place as a result of dissident members of the minority community invoking "rights" granted them by the dominant culture, then the change constitutes not a response of the community to the new circumstances confronting it but a change enforced by the wider society interfering in its internal practices.

Although these arguments may justifiably be put against Kymlicka, it must also be borne in mind that none of this is to suggest that cultural communities can be insulated from the wider society. As T. S. Eliot suggested, this is an illusion which can only be maintained "by a careful fostering of local 'culture,' culture in the reduced sense of the word, as everything that is picturesque, harmless and separable from politics, such as language and

literature, local arts and customs."[73] There must, of necessity, be some political contact between the dominant and the minority culture, and change is inescapable for both. The problem here is to establish the principles that account for the place of minority cultures within the larger society. The problem is not that of finding ways to insulate minority cultures against change.

The argument against Kymlicka is that his account of the place of cultural minorities seeks to entrench cultural rights on a basis which itself undermines many forms of cultural community, specifically those that fail in their practices to conform to liberal norms of tolerance and to honor the liberal ideal of autonomy. Cultural minorities are given protection — provided they mend their ways. In the end, it is only culture in Eliot's "reduced sense of the word" that is protected. Thus from the perspective of a defender of the interests of cultural minorities, Kymlicka's view has to be found wanting.

But his position is also inadequate from a liberal point of view. Here the problem stems from his desire to give cultural minorities differential rights on the basis of liberal equality. His contention is that cultural minorities are specially disadvantaged because they can face inequalities which are the result of circumstance rather than choice and that, in cases such as that of the Inuit, all members of the minority face the same inequality of circumstances as compared with the majority culture. Yet both parts of this contention look dubious in the extreme. First, there is no good reason to think that only minorities can face inequalities which are not the product of their choices. Anyone born physically or mentally disabled, for example, could make this claim no matter what his culture, as indeed might anyone born into poverty. If there is a reason to give cultural minorities special rights, lack of control over circumstances surely is not one of them.

Second, the idea that *all* minority members face the *same* inequality of circumstances seems absurd. Even if the Australian Aborigines are collectively and, on average, the worst off in the society (and they are if we look to the standard range of social indicators — from infant mortality to rates of imprisonment), there are many (even if, arguably, not enough) Aborigines who are better off — richer, better educated, more powerful — than the majority of Australians. So, why not give other disadvantaged Australians the same rights? Again, there seems to be no case here for special cultural rights.

If these two empirical propositions are the basis of Kymlicka's call for cultural rights, then that call looks extremely dubious from the point of view of the liberal idea of equal treatment.

In sum, Kymlicka's theory seems both to grant cultural minorities too much recognition and to give them too little. It gives them too much insofar

as liberal equality does not appear to sanction special rights, and it gives them too little insofar as regarding choice or autonomy as the fundamental liberal commitment disregards the interests of cultural communities which do not value the individual's freedom to choose. If so, then it cannot mount a serious liberal challenge to the individualist view elaborated in this essay.

IV

Now it might, at this point, be objected that it is odd to criticize Kymlicka — or any other liberal view which seeks to incorporate cultural rights — for failing to respect some minority cultures, because the theory advanced in this essay maintains that cultures should not be given special protection, that there are no cultural rights. It is therefore worth reiterating that the point of this essay is not to disparage the interests of minorities but to argue that it is not necessary to abandon or modify liberal theory to do justice to their concerns. It is on the basis of this objective that Kymlicka's theory was questioned and found wanting from the perspectives of both cultural minorities and liberalism. The problem now is to explain more carefully what this liberalism amounts to and how it accounts for the place of cultural minorities in the wider society.

What should have become clear from the criticisms raised against Kymlicka is that the liberal view advanced here is individualist in quite a different way from some others. It begins with the relatively innocuous, shared assumption that moral evaluation is individualistic in the sense that what counts, ultimately, is how the lives of actual individuals are affected. "It is individual, sentient beings whose lives go better or worse, who suffer or flourish, and so it is their welfare that is the subject-matter of morality."[74] But unlike some other liberal views, including Kymlicka's, it does *not* go on to impose severe restrictions on what is to count as (a legitimate form of) human flourishing. It does not go on to suggest that human flourishing requires that the individual be capable of autonomy or have the capacity to choose his or her way of life on the basis of critical reflection on a range of options. Rather, it is content to accept that what matters most when assessing whether a way of life is legitimate is whether the individuals taking part in it are prepared to acquiesce in it.

These premises are somewhat austere. They may be more austere even than those on which Loren Lomasky chooses to defend his own conception of liberal basic rights: the idea of individuals as project pursuers.[75] Lomasky is critical of the idea of grounding liberal rights in the ideal of individual

autonomy — and for good reason: With the defense of autonomy often comes a disregard for actual practices and ways of life.[76] For this reason, he argues that what is most important and requires recognition is that individuals are project pursuers. Projects may not be chosen: "A person's commitments may be unarticulated and not at all the product of conscious deliberation culminating in a moment of supreme decision. They may rather be something that he has gradually and imperceptibly come to assume over time in much the same way that one takes on distinctive vocal inflections or the cast of one's face."[77] Nonetheless, project pursuit is "partial." "To be committed to a long-term design, to order one's activities in light of it, to judge one's success or failure as a person by reference to its fate: these are inconceivable apart from a frankly partial attachment to one's most cherished ends." Thus, Lomasky maintains, an "individual's projects provide him with a *personal* — an intimately personal — standard of value to choose his actions by. His central and enduring ends provide him reasons for action that are recognized as his own."[78]

But even to take personal project pursuit as fundamental to our nature excludes a part of human practice because some cultures are not able to accept the idea that *individual* projects can provide any sort of standard of value. Consider, once again, Maddock's portrait of Australian Aboriginal society:

> If we take human culture to be humanly created, then we are forced to the conclusion that there is among Aborigines a profound resistance to crediting themselves with their own cultural achievements. Their plan of life is held to have been laid down during The Dreaming by the powers and occasionally to have been modified since by the intervention of these powers, as when one appears to a man in a dream and communicates a new song or rite. Aborigines claim credit only for fidelity to tradition or, as they put it, for "following up The Dreaming". It is powers alone who are conceived as creative, men being passive recipients of unmotivated gifts. As men deny the creativity which is truly theirs, they can account for their culture only by positing that to create is to be other than human. To be human is to reproduce forms.[79]

In such a society, it would seem, individuals are not project pursuers; although they might be said to display commitments, they do not regard themselves as possessing *personal* goals.[80] Nonetheless, there may be enough reason to respect that way of life into which they have been inducted and which is the only life they know.

The theory advanced here looks to recognize as legitimate cultural communities which do not in their own practices conform to individualist norms or recognize the validity of personal projects. Yet at the same time, it is a liberal theory inasmuch as it does not sanction the forcible induction into or imprisoning of any individual in a cultural community. No one can be *required*

to accept a particular way of life. Thus if, as has often happened, some members of a particular culture on making contact with the wider society wished to forsake their old ways, they would be free to do so, and the objections of their native community would not be recognized. In this respect, minorities within cultural minorities receive some protection. On the other hand, if those members wished not to leave their community but to assert rights recognized by the wider society but not by their culture, they receive no recognition. What is given recognition first and foremost is individual freedom of association (and dissociation). The practices of communities of individuals, the majority of whom accept the legitimacy of the association, must also be accepted, the views of dissidents notwithstanding.

The implications of this view deserve to be spelled out in concrete terms. In the case of the Old Order Amish of Wisconsin, raised by Van Dyke, for example, it means that they would have the right to live by their traditional ways. Their right not to send their children to public schools beyond the eighth grade would be grounded not in the First Amendment guarantee of freedom of religion but in the principle of freedom of association. (Indeed, the obligation of Amish parents to send their children to public schools at all becomes questionable.)

A similar conclusion would be defended in the case of gypsy children. Section 39 of the British Education Act of 1944 makes it an offense for a parent not to send a child to school regularly but includes a special provision for gypsy children of no fixed abode. Because their parents move constantly in search of seasonal work, they are required to attend only half the number of school sessions. But because gypsy custom does not value schooling, the parents believing they can educate a child satisfactorily through informal instruction in the ways of their culture, only a minority of children receive any formal primary education. Their freedom to associate and live by their own ways, however, would, by my argument, make this permissible. The argument put by Sebastian Poulter that because "at present many gypsy children are being denied the sort of education which would fit them to make a rational choice of lifestyle as adults," there may be reason to convict the parents under the Education Act and override "this particularly harmful aspect of gypsy tradition and culture"[81] would be rejected. There is no more reason to insist that gypsy parents offer their children a "rational choice" of life-style through public education than there is to require that other parents offer their children the opportunity to become gypsies.

In the case of the Pueblo Indians, it means that if the community refuses to accept the conversion of some of its individual members to Protestant Christianity, those individuals have to choose between abiding by the wishes

of the community or ceasing to be a part of it. They may, of course, seek to change the Pueblo stance from within, but they may not appeal to any outside authority. As members of American society, they have freedom of religion; as Pueblo, they do not. The case of the individual Muslim wishing to deny that there is no other god but Allah and that Muhammad is his messenger is precisely analogous. As a citizen of a liberal society, he has the right of free speech; as a Muslim, however, he has no right to challenge Islam's fundamental tenet or to deny that the Quran was a part of God's essence by, say, embracing the metaphysical doctrines of the Mu'tazila.[82] The individual would therefore have to choose between being a part of the Muslim community and retaining his right of free speech. The community would be entitled to ostracize the individual who refuses to conform to its norms; it would not, however, be entitled to inflict any greater penalty.[83]

As these examples illustrate, the liberal view advanced here gives communities a considerable amount of power over the individuals who constitute their membership. Despite the individualist premises, some very strong "communitarian" conclusions have been reached. Communities undoubtedly are important, but it is not necessary to reject individualist premises so as to give them some recognition. To do this, however, the primacy of freedom of association is all-important; it has to take priority over other liberties — such as those of speech or worship — which lie at the core of the liberal tradition. Otherwise, "illiberal" communities cannot perpetuate themselves or even form.

This last point perhaps indicates more sharply what kind of liberal theory is being defended here. It is a theory which sees a liberal society as one that need not be made up of liberal communities. If society is, in Rawls's phrase, a "social union of social unions,"[84] there is no necessity that these all be liberal social unions. What is of crucial importance, however, is that each community enjoy a certain amount of independence and integrity: that they are in fact the social unions *of those individuals* and not simply the categories within which society places particular groups. For each social union to have any significant measure of integrity, it must *to some extent* be impervious to the values of the wider liberal society.

Yet the qualification "to some extent" is an important one. No community within a wider society can remain entirely untouched by the political institutions and the legal and moral norms of the whole. (One of the weaknesses of Robert Nozick's conception of utopia is that it suggests the possibility of a society of wholly independent communities unaffected by the workings of the other social unions or the society as a whole.[85]) For a number of reasons, most cultural communities will be profoundly affected by the wider commu-

nity. The most important reason is the very fact of the society recognizing the freedom of the individual to leave his community. Once the individual has the option to leave, the nature of his community is transformed, particularly if the formal right comes with substantive opportunities.

The case of the New Zealand Maori provides an illustration of this point. Maori society before contact with Europeans was, as Richard Mulgan explains, a very strongly nonindividualist culture. Groups and their welfare were the prime values, and individuals found their identity as part of the group, existing to serve collective ends. Individuals could justifiably be subordinated or sacrificed for the good of the community. Yet today, Maori social life is much less collectively oriented, with many Maori living in urban areas away from their tribal settings. Indeed, Maori identity has become much more a matter of individual personal choice. The cause of this change was the possibility of leaving the community. A precontact Maori would never have contemplated leaving the clan or village, but this is no longer the case. As Mulgan remarks, "Once the possibility of leaving with impunity becomes a practicable and the fact of staying becomes a deliberate decision the ethical balance between individual and group has shifted irrevocably in the individual's direction. Total loyalty to the group and submersion in its activities and purposes can never be recovered."[86]

In the theory defended here, although cultural communities may seek to protect themselves against the intrusions of the wider society, they may not take any action they like to enforce group loyalty. Thus, in recognizing the right of exit, they would also have to abide by liberal norms forbidding slavery[87] and physical coercion. More generally, they would be bound by liberal prohibitions on "cruel, inhuman or degrading treatment."[88] Cultural groups that persisted in violating such norms would therefore disappear as their dissident members exercised their enforceable claims against the community.

Cultural communities, however much they tried to distance themselves from the larger society, would be affected by it to the extent that their ways of life might have external effects. Even communities that are geographically separate and remote might generate environmental externalities. In such cases, they would not be able to invoke the right of free association as a defense against prosecution for damages, for example. This, again, might well have the effect of fundamentally altering the practices within the community.

Indeed, cultural communities would be more profoundly affected by the wider society to the extent that they opt to coexist more closely with it. For example, an Indian immigrant community which had chosen (whether sep-

arately or collectively) to settle in the midst of English society might be determined to retain certain customs or practices but would be subject to established legal provisions for, say, testator's family maintenance. In this respect, such communities would be open to legal challenge by their own members who dissent from the rulings of the community. It would also affect the community's understanding of the marriage contract and possibly its understanding of the obligations of children to their parents.

The idea of accounting for the claims of minority cultural communities by taking freedom of association, and the corollary right of exit for a community, as fundamental may perhaps now be seen in fuller light. Although formulated earlier as a freedom which seems to offer purely formal guarantees, it is clearly one that has some substantive bite. Thus without establishing cultural rights, it may be possible to account for the legitimate claims of cultural minorities in a liberal social order. Before pressing this conclusion any more strongly, however, it is necessary to look at some lingering worries and to say a little more about the nature of the society which provides the context for this theory.

V

Doubts and reservations about the liberal view advanced here will come, as ever, from two directions. First, there will be those who argue that the interests of cultural communities have been given too little recognition; and second, there will be those who maintain that they have been given too much.

Writers, like Van Dyke, have a number of reasons for complaining that liberal theory gives groups too little prominence. Two merit further attention. The first is that the liberal view does not recognize group claims to self-determination; and the second is the related concern that without special entitlements, such groups will not be able to take action to protect their identity. Van Dyke suggests that self-determination is vitally important and "is essentially the moral right of a group."[89] The initial defense he offers for this view, that "the existence of needs implies a right to act (within limits) to meet them, or that a conception of the good has a corresponding implication,"[90] is not especially robust, as little is said to explain how needs imply rights. But Van Dyke offers two other considerations: first, that sometimes "an interest of individuals can be best served, or only served, by allocating the related right to a group, and this is the case with self-determination."[91] In the face of "free and open individualistic competition with those who are more advanced," history shows us, groups such as indigenous peoples are

not capable of defending their interests.[92] Second, he argues that as a matter of empirical fact, many societies, including international society through such agencies as UNESCO and the United Nations, have chosen to recognize the right of peoples to self-determination or to preserve their culture.[93] This only makes sense in the context of a conception of group or collective rights of self-determination. Unless we think in terms of group rights, a large part of modern practice cannot be justified.

In response to this, a number of things need to be said. First, and most generally, it has to be recognized that there are considerable limits to the extent to which collective self-determination is possible. Once cultures come into contact with others and trade and other forms of social intercourse develop, it is very difficult for the community to preserve its ways.[94] As Richard Mulgan has pointed out, once there is the possibility of the individual leaving the group with impunity, the balance changes, and some practices can never be recovered. While it is true to say that many cultural minorities find it difficult to preserve their ways in the midst of an alien culture, there is little reason to think that giving rights to the group will change the fundamental nature of the problem.

Second, even if self-determination were possible, groups are not always united. Often, as was pointed out early in this essay, communities form and acquire an identity only after cultural invasion (whether by immigrants or colonialists). The desire for collective self-determination is in many instances forged by elites seeking to unify disparate groups that did not always claim a collective identity. Thus the Maori, for example, did not exist as a single people in the precolonial period, consisting of different subtribes grouped together in larger *iwi*, or tribes.[95] They began to perceive a common identity after European settlement. Yet even so, there is considerable ambiguity in the matter of Maori identity because of generations of intermarriage, with many undecided about which group they belong to. With the Maori, as with many other cultures, self-determination is problematic because there is considerable internal disagreement about the direction it should take.

Third, it ought always to be borne in mind that to give any community the right of self-determination is never a matter of giving it the power of determining its own destiny alone. As Donald Horowitz has put it, "To encourage some groups to determine their own future may also mean allowing them to determine the future of others."[96] If power is to be devolved in such ways, it ought to be done with great care, partly because it can adversely affect the peace and stability of the larger society but also because it will also have serious repercussions within the smaller cultural community that is acquiring the so-called power of self-determination. This latter con-

cern is particularly important when some of the self-proclaimed indigenous minorities are involved. The devolution of political power, as Horowitz has shown, tends to push conflict away from the major centers and into the subgroups.[97] The result is the exacerbation of subethnic divisions. While this may benefit the larger society which will no longer bear the brunt of ethnic confrontation, it may be highly destructive within some, relatively fragile, ethnic communities. The case of the Salish fishing communities provides a striking — but tragic — example of this.[98]

This brings us to our fourth point: Van Dyke's objection that unless we think in terms of group rights, much of modern practice cannot be justified. Here he has in mind the fact that many polities and international practices give recognition to groups. Lebanon, for example, from the National Pact of 1943 to the civil war that began in 1975-76, had an electoral system that required interethnic coalitions and "prevented the crystallization of allegiances around the overarching affiliations of Muslim and Christian."[99] This was accomplished by recognizing and institutionalizing ethnic claims. For example, all major offices were reserved: the presidency for the Maronites, the prime ministership for the Sunnis, the speakership for the Shiites, and so on. On the liberal view, Van Dyke would object, such practices would not be acceptable.

One initial observation must be made: Such attempts to regulate and contain ethnic conflict do not always succeed; Lebanon's case has, after all, had only limited success to say the least. Nonetheless, there may sometimes be good reason to design political institutions to take into account the ethnic or cultural composition of the society. Yet there is no reason to see this as inconsistent with liberal theory, which, at least since Montesquieu, has recognized the importance of the institutions conforming to the nature of the social order. While the guiding principle of respect for *individual* rights or liberties has to be upheld, the question of what institutional mechanisms are necessary to protect individual rights and provide for the stability of the social order is, to some extent, an independent one. The choice of electoral systems, for example, will vary according to any of a number of factors, ranging from the structure of the wider political system to the geographical concentration of populations to the country's political history.

One of the factors that has to be considered when constructing — or reconstructing — institutional mechanisms is the power of significant groups within the polity. A political structure that ignored the power of a significant minority could run the risk of minority disaffection developing into separatist demands and breakdown into civil war; here the case of Sri Lanka springs to mind. Equally, a structure that was unmindful of the power of the majority

group could bring about similarly unpleasant results. There is no need, however, to appeal to the rights of groups to justify designing mechanisms to cope with, and temper the exercise of, political power.

Indeed, it is often vitally important that group rights play no part in the justification of the mechanisms that uphold the modus vivendi. For such mechanisms to succeed, it is crucial that they be sensitive to the changing group composition of the political order and capable of adjusting the formal powers devolved toward particular groups in accordance with their actual power. (One of the reasons for the collapse of the Lebanese state was that the changing demographic structure produced by differential birth rates led to changes in the balance of power which some groups felt were not reflected in their formal standing.[100]) If groups are recognized as having rights *as groups*, it is much more difficult to justify mechanisms that vary their political entitlements with their size and influence. It is far better then to maintain an emphasis on the rights and liberties of the individual, while conceding that institutions have to be designed with a view to protecting those liberties by accommodating (and guarding against) the vagaries of group power.[101]

Thus far, the objections of those who wish to see greater recognition of group rights have been addressed. From another quarter, however, would come objections that even the individualist view defended here gives too much weight to the interests of cultural minorities. The fundamental concern of those who hold this view is well expressed by Poulter in his discussion of toleration of immigrant cultures. "Cultural tolerance," he writes, "obviously cannot become 'a cloak for oppression and injustice within the immigrant communities themselves,' neither must it unduly strain and endanger the integrity of the 'social and cultural core' of English values as a whole."[102] Here is a clear statement of the view that minority cultural communities must conform to the standards of morality and justice of the wider society — first, for the sake of justice within the minority community, and second, for the sake of the stability and social unity of the society as a whole. Does the view defended in this essay run the risk of upholding injustice within minority communities — perhaps to the extent that this will undermine the stability of society as a whole?

If to do justice is to give each person his or her due, the answer to the first part of this question depends on what we think a person is due. The problem is that different cultural communities have different conceptions of what individuals are due or entitled to, and in many cases, these conceptions will not value those freedoms and equalities which figure prominently in liberal conceptions of justice. Here, then, it has to be admitted that by liberal standards there may be injustice within some cultural communities: Freedom

of worship may not be respected; women may have opportunities closed off to them; and the rights of individuals to express themselves may be severely restricted.

Yet it must also be borne in mind that the probability and the extent of "injustice" is tempered by two factors. The first is that the acceptability of cultural norms and practices depends in part on the degree to which the cultural community is independent of the wider society. Tribal communities of Indians or Aborigines which are geographically remote and have little contact with the dominant society might well live according to ways which betray little respect for the individual. Yet cultural communities that are more fully integrated into the mainstream of society would not find it so easy because their members will also be a part of the larger legal and political order. They might, for example, be tied to that order not only by the fact of citizenship but by the fact that they own property, trade, and use public services. This makes it more difficult to maintain different standards of justice partly because community members (especially of the younger generation) may reject them in favor of the societywide norms but also because individuals are not free to change their cultural allegiances as convenient. We cannot choose to be Quakers only in wartime.

To take a practical example, people from the Indian subcontinent settling in Britain, may not be entitled to enforce the arranged marriages of unwilling brides. Under section 12 of the Matrimonial Causes Act of 1973, a marriage can be annulled if it took place under "duress," and the case of *Hirani v. Hirani* in 1982 established that the threat of social ostracism could place the individual under duress to a sufficient degree to determine that the marriage was not entered into voluntarily.[103] The immigrant community, while entitled to try to live by their ways, have no right here to expect the wider society to enforce those norms against the individual.[104]

The second factor tempering the probability and the extent of "injustice" is the principle upholding individual freedom of association and dissociation. If an individual continues to live in a community and according to ways that (in the judgment of the wider society) treat her unjustly, even though she is free to leave, then our concern about the injustice diminishes. What is crucially important here, however, is the extent to which the individual does enjoy a *substantial* freedom to leave. As was indicated at the end of the preceding section, the freedom of the individual to dissociate from a community is a freedom with considerable substantive bite. Yet there are certain conditions which make this possible, and these ought, in conclusion, to be brought out more explicitly, for they go a little way further to indicating what kind of social and political order is upheld by the theory advanced here.

The most important condition which makes possible a substantive freedom to exit from a community is the existence of a wider society that is open to individuals wishing to leave their local groups. A society composed of tribal communities organized on the basis of kinship, for example, would not make the freedom of exit credible: The individual would have to choose between the conformity of the village and the lawlessness (and loneliness) of the heath. Exit would be credible only if the wider society were much more like a market society within which there was a considerable degree of individual independence and the possibility of what Weber called social closure was greatly diminished.

More important still, the wider society would have to be one in which the principle of freedom of association was upheld, and this seems unlikely in a social order in which the other liberal freedoms were not valued. This suggests that it may be necessary that the wider society itself be one that could be described as embodying a liberal political culture.

NOTES

1. Anthony D. Smith, *The Ethnic Revival* (Cambridge: Cambridge University Press, 1980), 1. Liberal hopes are described as "delusions," resting "on a systematic underestimation of one of the fundamental trends of the last two centuries."

2. Harold R. Isaacs, *Idols of the Tribe: Group Identity and Political Change* (New York: Harper & Row, 1975), 216.

3. Vernon Van Dyke, "The Individual, the State, and Ethnic Communities in Political Theory," *World Politics* 29 (April 1977): 343-69, at 344. See also "Justice as Fairness: For Groups?," *American Political Science Review* 69 (June 1975): 607-14; "Collective Entities and Moral Rights: Problems in Liberal Thought," *Journal of Politics* 44 (1982): 21-40; *Human Rights, Ethnicity, and Discrimination* (Westport and London: Greenwood, 1985).

4. Frances Svensson, "Liberal Democracy and Group Rights: The Legacy of Individualism and Its Impact on American Indian Tribes," *Political Studies* 27 (1979): 421-39, at 438.

5. John Gray, "Mill's and Other Liberalisms," in his *Liberalisms: Essays in Political Philosophy* (London and New York: Routledge, 1989), 217-38, at 234.

6. Ibid., 235.

7. Will Kymlicka, *Liberalism, Community, and Culture* (Oxford: Oxford University Press, 1989), 152.

8. Ibid., 211: "A government that gives special rights to members of a distinct cultural community may still be treating them *as individuals*; the provision of such rights just reflects a different view about how to treat them as individuals."

9. In the account that follows, I borrow freely from John Gray's discussion in *Liberalism* (Milton Keynes: Open University Press, 1985), x.

10. Van Dyke, "The Individual, the State," 361.

11. Ibid., 363-4. See also his paper on Rawls, "Justice as Fairness."

12. Van Dyke, "The Individual, the State," 363.

13. Ibid.

14. Ibid., 364.

15. Ibid., 365.

16. Ibid., 366.

17. Ibid., 367.

18. Ibid., 368.

19. Ibid., 369.

20. "Thus, the liberal, moved by humane concerns, has to favour some kind of a special, protective for them — perhaps establishing territorial reserves from which others are excluded. But this is contrary to liberal doctrine, which is at least integrationist if not assimilationist; permanent communalism is unacceptable." Vernon Van Dyke, "Collective Entities and Moral Rights," 29.

21. A finer distinction needs to be made with regard to certain cultural groups such as the American Indians or the New Zealand Maori that did, in some sense, exist as cultural groups before European political institutions were established in their territories. This distinction is discussed further on in the essay.

22. Donald L. Horowitz, *Ethnic Groups in Conflict* (Berkeley: University of California Press, 1985), 589.

23. Smith, *The Ethnic Revival*, 85.

24. Horowitz, *Ethnic Groups in Conflict*, 73; see also chap. 2 passim.

25. Ibid., 66.

26. Ibid., 66-67.

27. Ibid., 68. See also Alfred P. Rubin, *The International Personality of the Malay Peninsula: A Study of the International Law of Imperialism* (Kuala Lumpur: Penerbit Universiti Malaya, 1974).

28. Horowitz, *Ethnic Groups in Conflict*, 195.

29. Ibid., 69.

30. A more detailed defense of this individualist standpoint may be found in Chandran Kukathas and Philip Petit, *Rawls: A Theory of Justice and its Critics* (Oxford: Polity Press, 1990), 12-16. For a contrary view, see Charles Taylor, "Irreducibly Social Goods," in *Rationality, Individualism and Public Policy*, edited by Geoffrey Brennan and Cliff Walsh (Canberra: Australian National University, 1990), 45-63; but see the reply by Robert E. Goodin, "Irreducibly Social Goods: Comment 1," 64-79.

31. Note that I have not made the stronger assertion that it is only the lives of individuals *within* the group that can relevantly be taken into account.

32. On this, see Horowitz, *Ethnic Groups in Conflict*, 71.

33. Ibid., 101. Bitter jokes about the two most dangerous tribes in Africa, the Wabenzi (those who drive Mercedes cars) and the Bintu (those who have "been to" Europe and America) suggest that there is an awareness of the differences of interest.

34. Ibid., 225, and more generally chap. 5.

35. See Judith Wright, *We Call for a Treaty* (Sydney: Collins/Fontana, 1985), 292-99.

36. A complaint made by a senior Aboriginal public servant, Charles Perkins, responding to Aboriginal complaints about his ineffectiveness. See Scott Bennett, *Aborigines and Political Power* (Sydney: Allen & Unwin, 1989), 103.

37. "With the existence of the few rich Malays at least the poor can say their fate is not entirely to serve rich non-Malays. From the point of view of racial ego, and this ego is still strong, the unseemly existence of Malay tycoons is essential." Mahathir bin Mohamad, *The Malay*

Dilemma (Kuala Lumpur: Federal Publications, 1981), 44. See also Thomas Sowell, *Preferential Policies: An International Perspective* (New York: Morrow, 1990), 48-51.

38. Horowitz, *Ethnic Groups in Conflict*, 226.

39. I owe this point to Richard Mulgan, who suggests that the urbanized Maori in New Zealand might provide an example of elite interests.

40. One Aboriginal businessman thus complained: "Land is granted to appease the non-Aboriginal conscience in the large cities, but Aborigines are not allowed to use it freely because paternalists do not think the black man is sufficiently mature to behave responsibly. For example, Aborigines are prohibited from selling, leasing or trading their land—thus shut out of the activities that would make their land an economic asset." Bob Liddle, "Aborigines Are Australian too," in *A Treaty with the Aborigines?*, edited by Ken Baker (Melbourne: Institute for Public Affairs, 1988), 14.

41. Van Dyke, "Collective Entities," 29.

42. Ibid., 29. The internal quotation is from a Commissioner of Indian Affairs, as quoted by Frances Svensson, *The Ethnics in American Politics: American Indians* (Minneapolis: Burgess, 1973), 73.

43. Ibid., 29. The internal quotation is from *Congressional Record*, July 27, 1978, H7458.

44. Van Dyke, "The Individual, the State," 365.

45. Ibid., 365.

46. Ibid.

47. There are also rights which the individual might have as a member of the wider society. Some of these might be exercised by an individual while living in a cultural community within that society; other rights might not be open for the individual to take up without leaving his cultural community. For example, an individual might not be free to exercise the right to marry whomsoever she wishes if such a right is recognized by the wider society but not by her religious community—unless she chooses to leave her religion. This issue is discussed more fully later.

48. Kymlicka, *Liberalism*, 144.

49. Thus the question that Kymlicka poses himself (on p. 162) is "How can we defend minority rights within liberalism, given that its moral ontology recognizes only individuals, each of whom is to be treated with equal consideration?"

50. Ibid., 151.

51. Ibid., 151-52.

52. Ibid., 164; "Aboriginal rights, at least in their robust form will only be secure when they are viewed, not as competing with liberalism, but as an essential component of liberal political practice."

53. Ibid., 162.

54. Ibid., 165.

55. Ibid., 178.

56. Ibid., 197.

57. Ibid., 165.

58. Ibid., 167.

59. Ibid., 190.

60. Ibid., 240.

61. Ibid., 241.

62. Ibid., 19. See J. S. Mill, *On Liberty in Utilitarianism; On Liberty; Essay on Bentham*, edited with an introduction by Mary Warnock (London: Fontana, 1985), chap. 3.

63. Kenneth Maddock, *The Australian Aborigines: A Portrait of Their Society* (Ringwood: Penguin, 1972), 193-94. John Anderson's account of freedom, referred to at the beginning,

suggested that freedom in a community is measured by the degree to which its ruling order meets with opposition and its ruling ideas with criticism, and that the servility of a community is measured by the extent to which political opposition is suppressed. This is discussed by Maddock on 192-93.

64. Svensson, "Liberal Democracy," 430-34.

65. Kymlicka, *Liberalism*, 196.

66. Svensson, "Liberal Democracy," 434.

67. Kymlicka, *Liberalism*, 196.

68. Ibid., 196-97.

69. I have discussed the importance of identity with regard to the Australian Aborigines in *Without Oppression or Disputation: Aboriginal Identity and the Origins and Growth of the Protest Movement of the 1960s* (Canberra: B.A. Honors thesis, Department of History, Australian National University, 1978).

70. Kymlicka, *Liberalism*, 170. Elsewhere, Kymlicka writes of "helping the culture to move carefully towards a fully liberal society" (p. 170) and promoting "the longer-term idea of full liberal freedoms" (p. 171).

71. "There are no manners so innocent or reasonable, but may be rendered odious or ridiculous, if measured by a standard unknown to the persons; especially if you employ a little art or eloquence, in aggravating some circumstances, and extenuating others, as best suits the purpose of your discourse." David Hume, "A Dialogue," in Hume, *Enquiries Concerning Human Understanding and Concerning The Principles of Morals*, edited by L. A. Selby-Bigge, revised by P. H. Niddith (Oxford: Clarendon, 1975), 330.

72. It must, in fairness, be noted that Kymlicka is not suggesting that there is any reason to think that there is always a case for practical intervention by, say, the courts in cultural community affairs. He notes in the case of the Pueblo Indians, for example, that the dispute may be best resolved by tribal courts "if that is the consensus amongst the Pueblo." See *Liberalism*, 197. What precisely is meant here by consensus, however, is perhaps in need of fuller explanation.

73. T. S. Eliot, *Notes Towards the Definition of Culture* (London: Faber, 1962), 93.

74. Kymlicka, *Liberalism*, 242.

75. Loren Lomasky, *Persons, Rights, and the Moral Community* (Oxford: Oxford University Press, 1987).

76. Ibid., 248-50.

77. Ibid., 42.

78. Ibid., 27-8.

79. Maddock, *The Australian Aborigines*, 129.

80. Here I am not sure how strongly Lomasky wants to insist that projects are what provide personal standards by which individuals make choices. Elsewhere in his book he seems to suggest that any display of commitment may be taken as evidence of the existence of a project. See, for example, p. 45 where he says that all "patterns of motivated activity that form the structure of a scrutable life . . . merit recognition as projects." If so, there may be less reason for disagreement between us.

81. Sebastian Poulter, "Ethnic Minority Customs, English Law and Human Rights," *International and Comparative Law Quarterly*, 36 (1987): 589-615, at 600-1.

82. The Mu'tazila were an eighth-century Arab-Muslim school whose "larger philosophy, developed under the influence of Greek thought, betrayed the majority sentiment of the Arab-Muslim milieu about the nature of God and his creation. For other Muslims, Muhammad and the Quran, not reason, were the central experiences of Islam." See Ira M. Lapidus, *A History*

of Islamic Societies (Cambridge: Cambridge University Press, 1988), 107 and 105-108 more generally.

83. Certainly not the death penalty, as *some* Muslims have advocated in the case of Salman Rushdie.

84. John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1971), 527-30.

85. See Robert Nozick, *Anarchy, State and Utopia* (Oxford: Blackwell, 1974), part 3.

86. Richard Mulgan, *Maori, Pakeha and Democracy* (Auckland: Oxford University Press, 1989), 64.

87. This would include "voluntary slavery." For an argument showing why the individual has no right to sell himself into slavery, see Thomas W. Pogge, *Realizing Rawls* (Ithaca and London: Cornell University Press, 1989), 48-50.

88. See Poulter, "Ethnic Minority Customs," 602, for a discussion of this notion as it has affected British legislation through European Convention, Art. 3 and the International Covenant on Civil and Political Rights, Art. 7.

89. Van Dyke, "The Individual, the State," 360.

90. Ibid.; see also 350.

91. Van Dyke, "Collective Entities," 26.

92. Ibid., 28-29.

93. Ibid., 27.

94. This point is discussed by Karl Popper in his account of the development of the "open society" and the breakdown of tribalism. See his *The Open Society and Its Enemies. Volume 1: The Spell of Plato* (London: Routledge & Kegan Paul, 1977), chap. 10, esp. 176-77. See also F. A. Hayek, *The Fatal Conceit: The Errors of Socialism*, edited by W. W. Bartley III (London: Routledge, 1989), esp. chap. 3.

95. See Mulgan, *Maori, Pakeha and Democracy*, 12.

96. Horowitz, *Ethnic Groups in Conflict*, 591.

97. "Where groups are territorially concentrated, devolution may have utility, not because it provides 'self-determination,' but because, once power is devolved, it becomes somewhat more difficult to determine who the self is." Horowitz, *Ethnic Groups in Conflict*, 617.

98. The Salish people sought protection for their traditional culture through the legal process, winning special rights enabling them to continue traditional fishing practices. Indeed, the courts chose to recognize the cultural importance of traditional fishing and provided greater fishing opportunities on the basis of treaty rights. But the implementation of the decision exacerbated hitherto unimportant divisions within Salish society between riparian and marine fisherfolk. This made for the disintegration of that cultural community to the extent that it has seen the development of new inequalities, several lawsuits, and even open hostility between tribes. On this see Michael R. Anderson, "Law and the Protection of Cultural Communities: The Case of Native American Fishing Rights," *Law and Policy* 9 (April 1987): 125-42. Anderson's sobering conclusion is that, of the factors explaining the "decay of traditional cultural community" among the Salish,

> of greatest importance . . . was the pre-existing cultural divisions within other tribes which encouraged treaty fishers to take advantage of their expanded fishing rights in distinctly different ways. While equal before the law in terms of treaty rights, the Salish were and are culturally diverse: traditional and capitalistic marine fishers have different values and ways of viewing the world. It is perhaps not surprising that expanded opportunities accorded a culturally diverse group only reinforced the diversity. (Pp. 139-40)

99. Horowitz, *Ethnic Groups in Conflict*, 633.

100. On this, see John P. Entelis, " 'How Could Something So Right Go So Wrong? The Collapse of Lebanon's Ethnoconfessional Democracy'," in *A Way Prepared: Essays on Islamic Culture in Honor of Richard Bayly Winder*, edited by Farhad Kazemi and R. D. McChesney (New York and London: New York University Press, 1988), 216-40.

101. It is perhaps in this way that we should look to deal with some of the problems confronting Aboriginal and Indian communities who have claims based on past injustice. The solution is not to be found in recognizing group rights. Rather, it is to be found in specifying the entitlements of particular historical communities who were the victims of past injustice. Once the validity of their claims has been established (and I have said nothing here about how past injustice should be established or about the principles by which it should be treated), we can turn to the question of the institutional mechanisms needed to satisfy legitimate claims and rectify the injustice. If the granting of land rights is deemed an appropriate solution, this would open up the issue of the form which these rights should take, given the interests of the individuals in question and their communities.

102. Poulter, "Ethnic Minority Customs," 593.

103. Ibid., 599-600.

104. The community could, of course, continue to ostracize the dissenting member. It is perhaps impossible to prevent the oppression and injustice resulting from the withdrawal of love or affection or social acceptance.

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