

Canada's Contribution to Theorizing Rights
and Ethnocultural Diversity

Contribution to Panel on Canada's Contribution
to Understanding Rights and Diversity

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Andrew M. Robinson
Assistant Professor
Wilfrid Laurier University (Brantford)

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This paper presents a critical survey of recent Canadian contributions to theorizing rights and ethnocultural diversity as represented in the works of Charles Taylor, Will Kymlicka, James Tully, and Joseph Carens (hereinafter, 'the theorists'). Against the background of a broad consensus on such matters as the types of groups that deserve special accommodation, the types of accommodations they deserve, and the basis of social unity, the paper seeks to explore the underlying assumptions or moral foundations which underlie this consensus and to consider the impact of these differences at the level of more concrete policy concerns. The paper argues that within the broad consensus there are significant and enduring issues that can be traced back to differences at the level of underlying assumptions. In the course of its analysis, the paper identifies two broad types of underlying assumption—those on which the theorists are divided; and those which the theorists' works collectively to obscure—and argues that these need to be addressed directly if we are to have any hope of resolving the enduring issues.

The broad consensus can be summarized in six claims. First, it is reasonable to speak of groups of individuals that can be loosely defined in terms of 'culture.' Second, justice, properly understood, requires liberal-democratic conceptions of justice, which equate equal treatment with same treatment, to be modified, or even transformed, to enable the recognition or accommodation of cultural groups. Third, different types of groups warrant different forms of recognition or accommodation. Fourth, the exact nature of recognition or accommodation must be determined contextually—that is, there are no universal, cookie-cutter solutions. Fifth, intercultural dialogue is the appropriate means for making and resolving claims for recognition and accommodation. Finally, accommodating legitimate claims for recognition (and the dialogue this requires) is likely to enhance social unity, while denying legitimate claims is likely to

undermine it. These claims have been described in very general language because much controversy persists in the details.

The paper develops its argument across three parts. The first, which focuses on underlying assumptions, is divided into two sections. The moral foundations of each theorist's approach are considered in the first section and their assumptions about the relationship between liberalism, modernity, and justice are examined in the second. Over the course of this section characteristic positions on four important questions are identified that permit each theorist's approach to be uniquely identified by its underlying assumptions. The second part considers positions which the theorists' have taken on the types of groups that can warrant special accommodation and the types of accommodation they can warrant. Special attention is paid to demonstrating how enduring controversies can be traced back to competing positions taken on the four questions. The third part conducts a similar analysis with respect to positions that have been taken on the bases of social unity in ethnoculturally diverse states. Finally, throughout parts two and three, special note is taken of important issues that are obscured in all of the theorists' work. The paper concludes by suggesting how the various questions that have been identified through its analysis might constitute an agenda for further research.

I. Underlying Assumptions

In this first part of the paper, I wish to identify and typologize significant differences in the assumptions that underlie the consensus position outlined in the introduction. This first part is divided into two sections. The first section considers the moral foundations with which each theorist works and the conception of the groups which may warrant special accommodation that flows from these foundations. The second section considers how each theorist appears to understand the relationship between liberalism, modernity and justice. To describe the

assumptions that underlie each theorist's approach, part one introduces four questions that separate the theorists into cross-cutting pairings that collectively serve to uniquely categorize each theorist's position. The answers to these questions also serve as the basis for explaining the enduring differences in practical positions explored in parts two and three.

a. Moral Foundations and Relevant Groups

This section has two purposes. The first is to identify each theorist's position on three questions concerning underlying assumptions. While there is nothing new in suggesting that those who argue for accommodations of ethnocultural groups differ in their foundational assumptions, the questions I suggest here are not the usual ones.¹ The second purpose is to describe the value or values that each theorist treats as the foundation of his position and the conception of the cultural group that can justify accommodation on the basis of this moral foundation.

The three questions I address in this section arise in the context of a broad consensus on the merits of treating a general commitment to liberal-democratic values as an appropriate moral starting point. By this I mean, they would all agree that any legitimate theory of justice must be consistent with concern for the freedom and equality of individuals. This is perhaps not a surprising starting point for four English Canadian theorists. The three questions address how this general commitment to liberal-democratic values is to be operationalized in the process of acknowledging individuals' interests which arise from their cultural attachments. For the purposes of this analysis, each question will be treated as admitting of two possible answers. The answers are intended to represent general tendencies for heuristic and comparative purposes, not absolute positions that defy qualification. For question one—How should cultural concerns be introduced into a liberal-democratic framework?—the alternatives are: i) culture is introduced through a specific type of group; and ii) culture is introduced as an interest associated with

¹ Kymlicka, for example, acknowledges three bases: identity, freedom or autonomy, and diversity. (2001b, 47)

individuals. For question two—Should liberalism be treated as *the* basis of justice?—the alternatives are: i) liberalism can be treated as *the* basis for justice; and ii) liberalism should be placed in a broader context of competing conceptions of justice. Finally, the alternatives for question three are implicit in the question: Should individual freedom and equality be promoted by *emphasizing* individual rights or popular sovereignty? I will now discuss the four theorists in terms of the answers that their approaches suggest to these questions.

Will Kymlicka's approach treats a liberal conception of justice as foundational and promotes individual freedom and equality by emphasizing individual rights. It does this by privileging personal autonomy, which he defines as "the capacity to rationally reflect on, and potentially revise, our conceptions of the good life." (2001b, 307). He introduces cultural concerns into this framework by arguing that a specific kind of social group—societal culture—is a prerequisite of personal autonomy. A *societal culture* is "a culture which provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres. These cultures tend to be territorially concentrated, and based on a shared language." (1995, 76). Public policy designed to aid in the preservation of societal cultures can be just, Kymlicka argues, because it is only within their own societal culture that most individuals can access the meaningful options which constitute the 'context of choice' upon which their personal autonomy depends. (1995, 83, 86)

Like Kymlicka, Joseph Carens treats a liberal conception of justice as a moral foundation and seeks to promote individual freedom and equality by emphasizing individual rights. Thus, for instance, he says that liberalism suggests "minimal moral standards"—such as respect for liberal-democratic principles, human rights, (119) and "physical safety and bodily integrity"

(147)—which “set significant constraints on morally permissible cultural variation”. (250) Unlike Kymlicka, however, culture enters Carens’s approach through the interests of individuals, not a specific type of group like societal culture. On this account, culture can be a legitimate source of interests “because what people regard as their interests often depends on how they think of themselves and on how they think about the identity of their community.” (171) This association of culture with the interests of individuals allows Carens to acknowledge a wider range of groups than would qualify as societal cultures.² Thus, whether a group can justify a claim for special accommodation depends on balancing of a variety of factors including: “who [the members of the group] are and what they care about” (8), the degree to which their demands are consistent with “the framework of a commitment to equal respect for all” (12), and “political judgements differentiating more fundamental interests from less fundamental ones.” (13)

As he treats liberal rights and membership in cultural communities as distinct moral foundations, Carens is very aware of the possibility of conflicts between interests. In such cases, he argues, reconciliation requires a ‘contextual’ approach that involves a play back and forth between two conceptions of justice: justice as neutrality, “the idea of a common set of liberal principles” that can be used to assess “claims about the respect due to cultural difference”; and justice as evenhandedness, the idea that under some conditions “context can be morally decisive, that our moral understandings should turn on our understanding of the history and culture of a particular community.” (2000, 7) Thus each source of interests gives us reasons to place constraints on the other. To determine “whether a given arrangement that takes account of cultural differences is morally required or at least morally permissible,....requires a careful

² For instance, he provides a number of examples of such interests: Turks resident in Germany have “a vital human interest in being able to continue to live in the community in which they were born and raised”; native Fijians have a “vital Fijian interest” in a system of collective land ownership; the Amish have “interests in living their lives as members of an Amish community”; and we all have “fundamental human interests” in being able to live according to our “particular cultural and religious commitments.” (214, 223, 95, 147)

contextual analysis that takes account of how such an arrangement affects people's interests, how it enhances or restricts freedoms, how it reduces or increases inequalities, and so on." (73, 74-5)

While he says that we should not insist "that a single perspective must triumph" (262), this stands in considerable tension with his claim that policies and practices based on cultural interests that constrain minimal moral standards like freedom and democracy can only be justified in extreme cases and only where they are temporary. (249-250)

Unlike Kymlicka and Carens, the moral foundations of Charles Taylor's approach places liberalism in a context of competing conceptions of justice. For Taylor, we must search for what I am calling moral foundations in the historically-developed collective state of consciousness of our civilization which he calls our social imaginary—"the ways people imagine their social existence, how they fit together with others, how things go on between them and their fellows, the expectations that are normally met, and the deeper normative notions and images that underlie these expectations." (2004, 69, 23) While our social imaginary is limited in time and space,³ it is the appropriate place to seek foundations for *our* arguments. Despite being rooted in consciousness, a social imaginary is "an essential constituent of the real"; it "constitutes a horizon we are virtually incapable of thinking beyond." (2004, 183, 185) If a moral foundation is to have any traction for us, then, it must find its basis in an accurate representation of our social imaginary.

The general story Taylor tells is of the transformation from premodern to modern society, from societies organized by ascriptive and hierarchical honour ethics to ones reflecting a politics of equal dignity for all individuals. (1994, 25-37) He finds much that is admirable in this process, including the ascendance of values like equality, freedom, popular sovereignty, and human

³ As a product of historical development, it was not always so; as a state of consciousness of a particular civilization, not everyone shares it even today.

rights. These admirable values can become problematic, however, if matched with a widespread misconception which he calls the “‘subtraction’ account of the rise of modernity” which suggests that for modernity to emerge we “just needed to liberate ourselves from the old horizons”. (2004, 18) As I understand it, the problem is that the subtraction account encourages the view that the individual, as represented in modern societies, reflects what is universal in human nature after all the trappings of socialization have been removed. Taylor thinks this is wrong and dangerous because it misconceives the nature of modern society; properly understood the emergence of modernity involved the *transformation, not the absence*, of social orders. Thus, for instance, he says that even in the most individualistic modern societies ‘individual independence’ is “a social, and not just a personal, ideal.” (2004, 151) For Taylor, then, modernization is a process which each society undergoes on its own terms: “it is easy to go on nourishing the illusion that modernity is a single process...my foundational hunch is that we have to speak of ‘multiple modernities’”. (2004, 195) Modernity, and thus even liberal conceptions of justice in modernity, is multiple because each culture undergoes modernization by “finding resources in their traditional culture to take on the new practices.” (1997, 44)⁴

While there are many features to the modern social imaginary, two are especially relevant to consideration of rights and ethnocultural diversity: the ideals of authenticity and popular sovereignty. Taylor describes the ideal of authenticity—“the idea that each of us has an original way of being human” that we must live in accordance with if we are to “be true and full human beings”—as developing in the wake of the “collapse of social hierarchies.” (1994, 28-30)

Disembedded from the social positions which defined identity in premodern societies, each

⁴ I should note that while there is much that is appealing in this idea of ‘multiple modernities,’ it is not without its difficulties. In particular, *Modern Social Imaginaries* is problematic to the extent that Taylor does not clearly distinguish ‘modernity’ as a general phenomenon from ‘Western modernity’ as a particular instance of it. As a result, it is not clear how to determine whether a culture which differs from modern Western culture is an example of non-Western modernity or is simply not modern. To be fair, such criteria would only likely be the result of a comparative study of modern, which Taylor does not purport to have conducted.

person's identity became "*individualized*": without a socially-defined identity, the individual must define her identity for herself. (1994, 31) Here authenticity connects to identity and recognition: equal respect for individuals requires extending equal recognition to the identities they have formed.

Taylor's next key move is to suggest that while personal identity in modernity is individualized, it does not develop in isolation (i.e., monologically). Rather it develops dialogically in communication with "significant others" through a particular language. (1994, 32) As I understand it, this emphasis on dialogical relations has two important consequences. First, it ties back to authenticity because for the individual to lead an authentic life, these others must recognize, and not misrecognize, the identity the individual has actually formed; "The projection of an inferior or demeaning image on another can actually distort and oppress, to the extent that the image is internalized." (1994, 36) Second, if we care about the authenticity of individual identities, and if authentic identities are formed and sustained in dialogical relationships with significant others, then we must care about the communities and cultures which foster and sustain these relations.⁵ Primary among these is a specific type of cultural group: the nation. (REFERENCE) Thus, any acceptable account of justice must prove "willing to weigh the importance of certain forms of uniform treatment against the importance of cultural survival, and opt sometimes in favour of the latter." (1994, 61).

Taylor promotes individual freedom and equality by combining his concerns with identity, authenticity and recognition with an emphasis on popular sovereignty, which he says requires the realization of "the government of **all** the people." (2003/2004, 18, emphasis in original) This can only be the case where the people share a political identity that can act as the

⁵ This also impacts another modern value: dignity. In modernity, unlike pre-modernity, "My sense of self worth can no longer be based mainly on my lineage, my clan. A goodly part of it will usually be invested in some other categorical identity [like my nationality]." Thus, to the extent that my nationality is devalued, so am I. (1997, 45, 44)

basis of a collective agency. Under conditions of ethnocultural diversity, if the authenticity of each citizen's identity is to be given equal recognition, the state cannot define this collective agency in terms of just one, even the largest, of its cultural groups. If it does, members of its cultural minorities may come to believe that they are "being ruled by some agency that need to take no account of [them]." (2004, 189) Those who are excluded will feel alienated; "the rule of this government seems illegitimate in the eyes of the rejecters, as we see in countless cases with disaffected national minorities". (2004, 190)

If the government is to be the government of all the people, then the state's political identity—which he defines variously as "some strong common purpose or value" and "the generally accepted answer to the What/whom [is a country] for? question"—must be "shared." (2004, 188-189, 192) Thus, Taylor suggests, the state balances its needs to recognize its citizens' different identities and to generate a collective identity capable of acting as a sovereign people, through the process of "sharing identity space": "Political identities have to be worked out, negotiated, creatively compromised between peoples who have to or want to live together under the same political roof". (2003/2004, 20) Sharing identity space requires more than a nationalism that simply leaves room for minorities to exist: "In the best cases, as with the Parti Quebecois, and the more liberal wing of the B.J.P., minorities are to be guaranteed their rights, but the idea of sharing identity space, actually negotiating some compromised political identity with them, is vigorously rejected." (2003/2004, 20) When identity space is properly shared, it seems, the core goals of the minorities contribute to the political identity which exercises popular sovereignty.⁶

James Tully also seeks to promote individual freedom and equality by emphasizing popular sovereignty. Unlike Taylor, however, he does this in a way that allows culture to enter

⁶ This is illustrated when, in discussing the place of Quebec in Canada, he writes: "Refusing all mention of this [the promotion and protection of Quebec's distinct society] in the canonical definitions of the Canadian identity can only increase the feeling many Quebecers have that they have no place in the federation." (2000, 28)

through individual interests, not a specific type of cultural group. The individual interest that unites culture and popular sovereignty for Tully is freedom: “The primary question is thus not recognition, identity or difference, but freedom; the freedom of the members of an open society to change the constitutional rules of mutual recognition and association from time to time as their identities change.” (2001a, 5) This understanding of freedom, however, is coloured by assumptions about the importance of culture to individual identity: “The diverse ways in which citizens think about, speak, act and relate to others in participating in a constitutional association...are always to some extent the expression of their different cultures.” (1995, 5-6) A just constitution, then, which emphasizes popular sovereignty of a people made up of culturally diverse individuals, would “give recognition to the legitimate demands of the members of diverse cultures in a manner that renders everyone their due, so that all would freely consent to this form of constitutional association.” (1995, 7)

Constitutionalism as it has been developed in Western countries like Canada fails this test of justice by seeking to impose one cultural practice of constitutionalism upon culturally diverse citizens. The result: it cannot receive the free consent of all individuals. Tully rests his hope for a “post-imperial view of constitutionalism” (1995, 185) which could garner such consent, on his assumption that cultures in diverse societies “are neither sharply bounded, homogenous nor static; they are a cluster of intercultural relations negotiated and renegotiated over time.” (1994, 90) The argument for this has two key components. The first is that the dominant view of constitutionalism in the West, which is incapable of accommodating cultural diversity, is not the only understanding of constitutionalism in the Western tradition; there are also other ‘hidden’ elements that are available to be recovered. (1995, 99) The second component follows from the description of cultures as “overlapping, interactive and internally negotiated.” (1995, 4) It

suggests that within each culture there will be competing views of, among other things, constitutionalism; some will overlap with perspectives found in other cultures, some will not. Tully describes the overlap as representing the “common language of constitutionalism” that is spoken on the “intercultural common grounds”. (1995, 99, 100) This dovetails with his conception of freedom as popular sovereignty: the only view of constitutionalism to which all might freely consent is the one that is articulated on this “intercultural ‘common’ ground.” (1995, 14)

Fortunately, this is exactly where Tully finds the hidden elements of the Western constitutionalism. In *Strange Multiplicity* he argues that a constitution that reflected the common language of constitutionalism would “be seen as a form of activity, an intercultural dialogue in which the culturally diverse sovereign citizens of contemporary societies negotiate agreements on their forms of association over time in accordance with the three conventions of mutual recognition, consent and cultural continuity.” (1995, 30) That is, each group would be recognized by other groups as it understands itself (mutual recognition), and each group should be permitted to continue its present identity (continuity) until such time as it agrees to changes that would affect that identity (consent).⁷

Thus, by appealing to the idea of an intercultural common ground, Tully, like Taylor, places in liberalism in a broader context of competing conceptions of justice. Unlike Taylor, however, the foundation he seeks is not bounded by Western civilization, but rather is shared across cultures and civilizations. Similarly, no type of cultural group has a privileged position in Tully’s account. This is reflected when he says the rights of nations “are a subset of the kinds of rights that any member invokes whenever he or she enters into public debate, joins a political party,

⁷ Tully has not invoked this three convention formulation in his more recent writing. This may reflect his belief that even the procedures of a just dialogue cannot be determined in advance of the dialogue itself. (2004, 97)

votes, demonstrates, introduces a bill in parliament, enters into litigation, initiates treaty negotiations, or any other form of participation, with the aim of changing any of the rules of the society.” (2001a, 13)⁸

So far, then, in the process of examining the moral foundations of each theorist’s approach, we have seen that they can be grouped according to the positions they take on the first three questions. Concerning the how culture is introduced into the argument, Kymlicka and Taylor associate culture primarily with a specific type of social group (i.e., societal culture and nation, respectively), while Carens and Tully treat it as an interest of individuals. Regarding the status of liberalism vis-à-vis justice, Kymlicka and Carens treat a liberalism as *the* conception of justice, while Tully and Taylor place it in a broader context. Finally, regarding how the theorists promote liberal-democratic concern for the individual freedom and equality, Kymlicka and Carens emphasize liberal rights while Taylor and Tully emphasize popular sovereignty.

b. Liberalism, Modernity, and Justice

It is natural that theorists considering Canada should address, to a greater or lesser extent, the relationship between liberalism, modernity, and justice. On the one hand, Canada encourages the treatment of liberal democracy and modernity as a normative and empirical starting point for considering ethnocultural diversity. On the other hand, some key forms of cultural diversity represented in Canada are neither unqualifiedly liberal nor modern (e.g., aboriginal peoples, Hutterites).

The presence of such cultural differences is significant because it poses a challenge to the treatment of liberal conceptions of justice as a starting point.⁹ In this section I will focus on two

⁸ Compare this with Taylor’s position that: “Modern nationalist politics is a species of identity politics. Indeed, the original species: national struggles are the site from which the model comes to be applied to feminism, to struggles of cultural minorities, to the gay movement, et cetera.” (1997, 46)

such challenges. They can be distinguished by their relation to modernity (and modernization). This requires me to hazard a description of **modernity**. I will treat it as involving two related processes. One involves a transformation in consciousness; for example, Roger Scruton attributes to modernity “the transformed consciousness of the world and the self that comes from living ‘now’, rather than ‘then’ ...[by which] The modern man exists in *conscious* relation to history”. (302-303) The other process concerns a transformation in institutions; this includes, for example, the emergence of market-industrial economies, bureaucratic states, “modes of popular rule,” and science and technology. (Taylor 1997, 43; 2004, 195) This description of modernity allows us to distinguish two types of illiberal culture: illiberal modern cultures (e.g., authoritarian and totalitarian) and non-modern cultures (I refer to ‘*non-modern*’, rather than *premodern*, cultures to resist the implication of an inevitable process of societal and cultural development). These distinctions put into play three concepts—liberalism, modernity, and justice—that can be, and, as we shall see, are, related in very different ways that have significant implications for considerations of justice and ethnocultural diversity in modern liberal-democracies. They also allow us to round out the discussion of underlying assumptions by suggesting where each theorist stands on a fourth question: should modernity be treated as inevitable, or should non-modern cultures be treated as potentially having enduring value?

Before proceeding to the analysis, I should note one way of dealing with this matter that is advocated by all of the theorists in one way or another. This is to suggest that many cultural differences that seem to constitute conflicts with liberal-democratic values are more apparent than real. The general claim is that the liberal conception of justice should not be narrowly

⁹ For instance, Kymlicka acknowledges critics who have challenged “the very normative basis” of his theory by asking: “Why should we presuppose that *liberal* values provide a satisfactory basis of justice in ethnocultural relations?” (2001b, 56, emphasis in original)

equated with the principles and political institutions of the West.¹⁰ I believe this represents a real advance in our ability to accommodate cultural difference. It is not of universal application, however, because some cultural differences do represent real, and not merely apparent, conflicts with liberal conceptions of justice.

In the discussion that follows I will draw out the position that I understand each theorist to take, explicitly or implicitly, on the relationship between liberalism, modernity, and justice. In the process I will suggest how each theorist's position relates to his choice of moral foundations and how it affects how and why his theory does, and indeed *can*, address the concerns of cultural minorities. The general pattern, we will see, is that Taylor and Kymlicka's positions tend to treat modernity and modernization as inevitable, while Carens and Tully treat non-modern cultures as potentially having enduring value.

The main reason I believe Kymlicka's work treats processes of modernization as inevitable is that his understanding of modernity appears to be essentially liberal. We see this in his description of modernization as involving "the diffusion throughout a society of a common culture, including a standardized language, embodied in common economic, political, and educational institutions. (1995, 76) The liberal nature of this account of modernity appears in the reasons he offers for the diffusion of this common culture: it is, he says, following Ernest Gellner, "a functional requirement of a modern economy"; it responds to the need of modern democracies/welfare states for high levels of solidarity; and it "seems to be required by the modern commitment to equality of opportunity." (1995, 77) A modernity that reflects commitments to democracy, the welfare state, and equality of opportunity is a liberal modernity. This relationship is given a normative twist when liberalism is equated with justice, as when

¹⁰ For instance, Kymlicka writes: "I don't think we should get hung up on 'rights talk'. What matters, morally speaking, is that people's substantive interests in life and liberty are protected, but we should be open-minded about what institutional mechanisms best provide this protection."¹⁰ (2001b, 89 n. 32; Carens, 156...)

Kymlicka writes: “A national minority which rules in an illiberal way acts unjustly.” (1995, 168)

Having defined modernity as essentially liberal in character, and liberalism as just, it is no surprise that Kymlicka chooses a liberal theory of justice which privileges personal autonomy for his moral foundation.

Kymlicka’s liberal account of modernity has important effects on the treatment he can justify extending to modern and non-modern, liberal and illiberal groups. For instance it explains his privileging of societal cultures. On the one hand, only societal cultures, which embody contexts of choice, are consistent with liberal concerns for personal autonomy.¹¹ On the other hand, societal cultures are the only cultures that can survive in the modern world. (1995, 80) Societal cultures, he writes, “did not always exist, and their creation is intimately linked with the process of modernization.” (1995, 76). Taken together these claims suggest, if only implicitly, that processes of modernization are inevitable; if they were not inevitable, it is not clear why it is not clear why non-modern cultures could be expected to survive in the modern world.

Reciprocally, the equation of liberalism with modernity and justice creates difficulties for Kymlicka in dealing with non-modern cultures. These groups are problematic, not so much because accommodating their demands may require restricting “the civil rights of group members” (1995, 165), but simply because they reject modernity. I think Carens makes a good point when he suggests that when Kymlicka uses words like ‘meaningful’ and ‘full’ in his description of societal cultures as providing “meaningful ways of life” and “full range of human activities”, he “is implicitly evoking a picture of a modern industrial society with its characteristic liberal rights and market opportunities.” (62) This assessment finds support when Kymlicka describes the (non-modern) Hutterites and Amish as “unique in wishing to avoid the modern

¹¹ This linkage between justice, modernity, and societal cultures is reinforced in recent comparative work on Africa and Eastern Europe where he grounds the rights of cultural minorities in their right to engage in modern nation-building in response to the nation-building processes of nations majorities within the state. (See, e.g., 2004, 2001a)

world. The do not want to become police officers, or doctors or engineers, or MPs.” (1998, 41); and also when he writes that “the sorts of laws from which these groups seek exemption are precisely the sorts of laws which lie at the heart of modern nation-building—for example, mass education.” (2001a, 37)

Having privileged modernity, it is not surprising that Kymlicka has difficulty defending accommodation of non-modern groups within the parameters of his theory. While these groups clearly fall afoul of his moral foundations of liberalism and personal autonomy, he is unwilling to recommend intervention to correct the injustice, even in cases where the illiberal community lives within a liberal state. To justify this position, however, he has to appeal to reasons that are not directly based in his moral foundations. These reasons include the severity of rights violations, “the degree of consensus within the community on the legitimacy of restricting individual rights, the ability of dissenting group members to leave the community if they so desire, and the existence of historical agreements with the national minority.” (1995, 169-170)

Finally, we might note in passing that the assumption of a liberal modernity creates an interesting puzzle for Kymlicka’s treatment of some important contemporary societies. The problem is not one of normative assessment: to the extent such societies are illiberal, they are unjust.¹² Rather, it is one of descriptive categorization. Having defined modernization in terms of democracy, welfare state, and equality of opportunity, it is not clear how to categorize typically modern, yet illiberal, forms of societies as fascist, totalitarian, and authoritarian.

A strength of Taylor’s approach is that, while he shares Kymlicka’s assumptions about the inevitability of modernity, he is able to take the diversity of understandings of justice within modernity more seriously. Taylor’s conception of multiple modernities, each with its own social imaginary, has some important effects. On the one hand, it provides the basis for his moral

¹² For a discussion of illiberal modern cultures see his discussion of liberal and illiberal nationalism. 2001a, 48-60.

foundation. It suggests why liberal justice may not necessarily be universal in its application, yet still apply to us: if liberal conceptions of justice make sense to us, it is because they are grounded in *our* social imaginary. On the other hand, Taylor's description of the institutions associated with modernity does not privilege liberal democracy to the same extent as Kymlicka's.¹³ This has clear implications for how Taylor will be able to address the concerns of cultural minorities. One is that, having associated liberal justice with Western modernity, rather than modernity per se, as Kymlicka does, Taylor is in a much better position to acknowledge the possibility that liberals might have reason to extend recognition to illiberal modern cultures. (This is reflected, for instance, in his suggestion that in dealing with other cultures we extend to them a "presumption of equal worth." (1994, 66, 72)) While Kymlicka's reluctance to impose liberal justice on illiberal cultures suggests that he shares something of this presumption, having grounded justice in a liberal modernity, he lacks the conceptual resources necessary to make sense of it.

While Taylor's account is more open to diversity with respect to illiberal modern cultures, it is no more promising than Kymlicka's when it comes to addressing the demands of non-modern cultures, or what we might call 'multiple orientations to modernity.' The reason: both Taylor and Kymlicka presuppose the inevitability of modernization to some extent; thus, while it may be possible to preserve modern cultural minorities, it is simply impossible to preserve non-modern ones. Taylor is most explicit about this, describing the "institutional forms" of modernity as "inescapable." (2004, 195)

I think it is important to digress for a moment and consider some reasons why we might want to resist assumptions about the inevitability of modernity. First, as an empirical claim, I

¹³ This is especially true of his reference to 'modes of popular rule,' (1997, 43) which, as C.B. Macpherson (1965) famously pointed out, can take a wider range of institutional forms than Kymlicka's liberal democracy and the welfare state. This point is less true of his reference to market economies.

believe the idea that modernity is inevitable is untrue; as Kymlicka's discussion of non-modern communities like the Amish and Hutterites demonstrates, all many of them really need to survive is to be left alone. A related reason for supposing the inevitability of processes of modernization is equally troubling: we, the powerful modern cultures, are simply unable or unwilling to leave them alone. I take this to be the gist of Taylor's point when he writes: "Whoever fails to take [the economic and bureaucratic processes of modernization] or some good functional equivalent on will fall behind so far in the power stakes as to be taken over and forced to undergo these changes anyway. There are good reasons in the relations of force for the onward march of modernity so defined." (1997, 43) This argument reminds me of Carens's caution about the danger that "one can accept too readily constraints which, however real, should themselves be subject to criticism." (226) In this case, the constraint which is too readily accepted is the tendency of the powerful to do what they want to the weak. To treat this as a constraint is to take the question of how we *should* deal with non-modern cultures off the table, and thus, to undermine a key reason for philosophizing about justice and cultural diversity in the first place.

Carens's work differs from Taylor's and Kymlicka's in that he explicitly recognizes the possibility that non-modern cultures may embody enduring values. Carens's openness to non-modern cultures differentiates his position from Kymlicka's. Rather than something merely to be tolerated, Carens thinks non-modern illiberal cultures can embody genuine human goods: "in thinking about what is good, we should take an open-minded stance, trying to think in broad terms about the conditions of human flourishing and the likely effects of imposed liberal institutions in particular contexts, not simply assuming the superiority of liberal arrangements in every context." (261) This openness is clearly rooted in concerns about the relationship between liberal modernity and "the possessive individualism of liberal capitalism." (244) For instance, he

finds the communalism of traditional Fijian culture attractive precisely because it embodies values inconsistent with modernity and capitalism. (244) It follows, then, that rather than just tolerating non-modern cultures, Carens advises liberals to “be open to, even supportive of, non-liberal cultures and ways of life”. (202)

This openness to the potential human goods embodied in non-modern illiberal cultures does not sit well, however, with Carens’s association of liberalism with justice. We see this association, for instance, when he suggests that “liberal democracy is the only just political order, *at least under modern conditions*”. (120, my emphasis)¹⁴ The normative impact of this claim is decisive with respect to illiberal modern cultures. For instance Carens says he feels confident criticizing contemporary Iran for being undemocratic because “Iran is a modern state, not a medieval empire. That sort of political community is morally constrained.”¹⁵ (49-50)

It is not nearly so clear, however, what effect this ‘at least under modern conditions’ proviso is intended to have on non-modern cultures. On the one hand, he endorses efforts designed “to protect Fijian culture against the pressures of modern liberal institutions and values”. (200) On the other hand, he says things that suggest that minimal moral standards, and thus liberal conceptions of justice, can never be entirely set aside. For instance, while he says that the idea of minimal moral standards that apply to all cultures has its immediate origin as “a feature of *our* morality” (47), he also suggests strict limitations on violations of these standards, even by non-modern cultures: violations must have an urgent purpose, there must be no other means of addressing this purpose, and, most importantly, they must be temporary. (249)

¹⁴ He describes this as his ‘view,’ but declines to elaborate a defense for it. (14)

¹⁵ As examples of these constraints, consider: “No modern state can legitimately have different ranks of citizenship” (213) and “This assumption [of the moral equality of persons] is central to the modern liberal tradition”. (215)

Similarly, while he never explicitly claims that processes of modernization are inevitable, he makes many comments that are, if nothing else, consistent with this view.¹⁶

A key feature of James Tully's perspective, which distinguishes it from the others, is his refusal to treat processes of modernization as a constraint on moral thinking. Instead, he adopts a critical perspective towards modernity by attempting to view matters "from the perspective of the struggles of Aboriginal peoples". Aboriginal perspectives provide an important vantage point because, as Carens has noted, unlike English or French Canadian cultures, aboriginal cultures are not modern and "cannot be understood as the product of modernization." (61) When modern constitutionalism is viewed in this way, he says, "unnoticed aspects of its historical formation and current limitations can be brought to light." (1995, 3) This perspective enables Tully to elaborate a much stronger version of the position that non-modern cultures may have enduring value than Carens.

Tully's conception of cultures as overlapping and internally negotiated allows him to challenge assumptions of the superiority of modernity as well as the tendency to essentialize the West in terms of modernity. (1995, 4) In particular, he argues that properly understood, Western cultures embody "two dissimilar [constitutional] languages: a dominant, 'modern' language and a subordinate, 'common-law' or simply 'common' language." (1995, 30) The dominant modern language embodies key elements of Taylor and Kymlicka's accounts of modernity as assuming: "a culturally homogenous and sovereign people...[who establish a constitution which] founds an independent and self-governing nation-state with a set of uniform legal and representative political institutions in which all citizens are treated equally". (1995, 41) As we have seen in

¹⁶For instance, he says "there is something to be said" (246) for the claim "that Western liberalism is morally superior to Fijian culture but that it was not, or is not, readily applicable to Fiji." (245) It is also consistent by his observations that the justification for protection of the Fijian traditional culture is weakened as "more Fijians seek advanced education and economic opportunities" (208); that the viability of the Fijian way of life is threatened by "population growth and the desire for economic growth" (233); and that Canadian "aboriginal cultures may successfully adapt to modern conditions". (61)

Taylor and Kymlicka's dealings with non-modern cultures, Tully says that theorists in the traditions of modern constitutionalism have difficulty accommodating many forms of cultural diversity because they respond to demands for cultural recognition by either assimilating the demands "to the prevailing forms of recognition" or judge them "to be unwarranted." (1995, 43) Such approaches only makes sense, however, if one conceptualizes the West as a modern liberal monolith.

Tully's suggestion that the West also speaks another language, one that embodies many so-called premodern values, would blur the clear distinction between modern and premodern cultures. On this view, the contemporary West is capable of recognizing the demands of non-modern cultures because it shares many of their values; these values have not been left behind in a premodern West, they may have been "elbowed aside". They are merely "hidden", and being hidden is not the same as being left behind. (1995, 37, 57)

Tully's conception of culture also provides a ground for challenging assumptions about the superiority of a liberal modernity or even modernity itself. The effect is to displace the understanding of modernity from the central role it plays in Kymlicka and Taylor's accounts, and replace it with a conception of constitutionalism that takes form on the "intercultural common ground." This suggests that what matters is what is common to, or overlaps, all cultures. Rather than marginalizing that which is not modern in cultures, this approach has the opposite effect: as the very essence of the definition of modern cultures is what distinguishes them from premodern cultures, the key features of modernity are marginalized on the intercultural common ground. In this way, Tully's conception of the relationship between liberalism, modernity, and justice allows him, unlike Kymlicka and Taylor, and more fully than Carens, to entertain the possibility of recognizing both modern and non-modern forms of cultural diversity.

In sum, consideration of how each theorist addresses the relationship between liberalism, modernity, and justice reveals another set of opposing pairings, this time between those who treat modernity and processes of modernization as inevitable (Kymlicka, Taylor), and those who treat non-modern cultures as potentially having enduring value. (Carens, Tully). It also suggests the need for further consideration in these debates about the role and meaning of modernity.

c. Summary Underlying Assumptions

I will conclude the analysis of Part I by indicating graphically how the theorists' positions on the four questions allows them to be uniquely mapped onto a four-section grid. I will argue in the rest of the paper that problems and disagreements at this underlying or metaphysical level reverberate through more concrete, policy-oriented debates and thus should not be ignored.

Question # & Alternative Positions	1. Culture Introduced Through Group; 4. Modernity Inevitable	1. Culture Introduced Through Individual; 4. Non-Modern Cultures May Have Enduring Value
2. Liberalism = Justice; 3. Emphasis on Liberal Rights	Kymlicka	Carens
2. Liberalism in Broader Context; 3. Emphasis on Popular Sovereignty	Taylor	Tully

II. Groups and Rights

My purpose in Part II is to demonstrate that many of the continuing controversies and problems that remain to be resolved in matters of rights and ethnocultural diversity can be traced back to the differences in positions on underlying assumptions discussed in Part I. When we turn to the actual positions these writers have taken in their substantive accounts of the groups that may

deserve special treatment and the treatment these groups may deserve, we find a surprisingly high degree of consistency, both across their positions and with Canadian practice. All believe that cultural concerns can justly be made the focus of public policy by national majorities as well as the basis of special accommodations for national minorities, indigenous peoples, and members of ethnic minorities. If we scratch the surface of this consensus, however, we find significant differences in the positions, and justifications of the positions, that are advocated. In considering these differences we identify some important unfinished business in matters of rights and ethnocultural diversity. Some concern matters of disagreements between the theorists, others matters that have been obscured in all of their works.

Part II is divided into five sections, each addressing a different type of cultural difference which has been addressed by at least some of the theorists. Consideration of positions that have been taken on these matters permits discussion of a number of important issues including: the appropriate attitude we should adopt towards the modern state and its boundaries; the distinction between citizenship in a state and membership in a cultural group; the place of indigenous peoples and other non-modern groups in theorizing modern liberal-democratic states; the status of cultures that are not embodied in nations; and whether the arguments used to justify special treatment of ethnocultural groups should be extended to other identity groups like those based on gender or sexual orientation.

a. National Majorities

By national majority, I refer to the cultural nation that constitutes the majority, or at least the dominant, group in the state or sub-state unit. There is general agreement that it is both legitimate and inevitable that national majorities will use the state to promote the interests and survival of their culture. (Kymlicka calls this nation building. (2001a, 21)) This consensus reflects, to no

small extent, agreement on the belief that it is impossible for the state to be culturally neutral in all of its laws and policies; key examples include choice of official language and national holidays. (Taylor 1996, 359; Kymlicka 2001a, 48; Tully 1995, 6; Carens 77-78) Combined with assumptions about the justice of majoritarian democracy, it is a short step to the claim that it is reasonable for the state to favour the interests of the majority in matters where cultural neutrality is impossible, subject, of course, to the proviso that the majority respect the rights of all its citizens. (See, e.g., Kymlicka, 2001a, 21, 48; Carens, 132; OTHER REFERENCES)

In discussing national majorities I want to demonstrate the extent to which this consensus depends upon the modern state and its existing territorial boundaries being treated as a constraint on moral thinking and not made the subject of criticism. This seems odd, given that, as a matter of historical fact, borders did not have to be drawn where they were. Once this consideration is brought to the fore, the fact that one cultural nation is a majority, and thus in a position to nation-build, and another is minority, appears morally arbitrary; borders do not affect collectivities and their fundamental interests, but the distribution of power. A fundamental question that remains to be addressed, then, is the moral status of international borders.

I'm only speculating here, but I believe an important reason these writers have not pursued this question very far is that they are writing as English Canadians. One of the key political problems that has captured the English Canadian imagination since at least the 1960s is the question of how to keep Quebec *within* the Canadian state. I think this problem leads more naturally to questions of *how* the existing states can be made just, rather than the more potentially destabilizing question of *whether* they ever could be just.

Even where the borders of existing states are left unquestioned, it is an important question as to what moral status should be accorded the national majority. On this matter, Taylor

and Kymlicka have provided examples of competing alternatives, which can usefully be thought of as flowing from their differing positions on the question of whether liberalism should be treated as *the* basis of justice (question two). On the one hand, Taylor, who, as we have seen, places liberal justice in a broader context of multiple modernities, treats the status of the majority nationality as morally significant. For example, in discussing Quebec, he has said it is legitimate for the state to treat the preservation of the identity of the old-stock French Canadian cultural community as its *raison d'être*. (1996, 359) In fact, he goes so far as to say that it is legitimate for members of the dominant community to determine certain aspects of its historical identity as not open for negotiation with newcomers in order to preserve the community's 'definite character.' He has suggested that these non-negotiables will include fundamental rights and the predominance of the French language in Quebec (1996, 363) and "democracy and human rights" more generally. (2003/2004, 24) To me this implies, although I am not aware of Taylor actually saying this, that the *raison d'être* of each state (and its borders) is to define a space within which each social imaginary can exist and evolve in terms of its own version of modernity.

On the other hand, Kymlicka, whom I have suggested treats liberalism as the standard of justice, suggests that not moral weight should be put on the majority's status. We see this when he writes that "liberal democracies reject the view that the state belongs exclusively to the dominant national group." (2001a, 59) This is consistent with a view of modernity as a singular process that is duplicated in different states. As different societal cultures within each state are experiencing the same processes of modernity, so long as each societal culture is preserved, it makes no sense to see one particular culture as being in a morally privileged relationship with any particular state.

Thus, while there is general agreement that the use of the state by cultural majorities to promote their cultures is not unjust, significant issues remain. For one, the exact moral status of this relationship remains unsettled. Further, differences on this matter, I have suggested, are grounded in different assumptions about the ultimate moral status of liberalism itself. Further, the consensus on the legitimacy of the ability of majority nations to use the state to engage in nation-building rests upon a common unwillingness to open up the modern state and its international borders to moral scrutiny.

b. National Minorities

On the matter of national minorities we find consensus on the idea that groups, like the people of Quebec, can legitimately demand the conditions necessary to ensure their survival as separate peoples or societies. There is also general agreement that such conditions include special rights, like group representation in political institutions, exclusions from laws or obligations that apply to other citizens, and self-government arrangements, including federalism. (See e.g.,....) Given this level of agreement I will address two matters: the relationship between underlying assumptions and positions regarding how to address conflicts between cultural accommodations and the interest of outsiders and insiders; and the way such discussion serves to obscure the difficult question of how membership in cultural communities should be defined.

Outsiders, Insiders, and Underlying Assumptions

As all of the theorists, being Canadians, have addressed the case of sign laws in Quebec, I will draw upon their positions to illustrate my points. For those unfamiliar with the case, the francophone community in Canada has its origins in New France, a French colony that was taken over by the British in 1763 and eventually incorporated into present-day Canada in 1867. While francophones reside in all of Canada's provinces, they only constitute a majority in Quebec. Not

surprisingly, many Quebecois have come to see the preservation and promotion of the historic francophone community as one of the provincial government's prime purposes. In 1977 this government passed a language law, commonly called Bill 101, to promote this purpose. Among other things, it required that all external signs be only in French. This law has always been controversial, primarily due to the perception that it promoted the language of the province's cultural majority at the expense of a liberal right (freedom of expression) of individuals who did not belong to this cultural community. The law became the subject of a case before the Supreme Court of Canada in 1988 (*Ford v. Quebec*) and was later relaxed in 1993 to require only the predominance of French on signs.

This case is very useful for illustrating two of my central claims. First, it shows how the consensus at a very general level (in this case on the claim that Quebec's sign laws can be justified) masks significant differences. In this case, the difference I will explore concern how each theorist addresses conflicts between policies designed to protect the community and: i) *outsiders* (e.g., non-francophones in Quebec); and ii) *insiders* or dissidents (e.g., francophones who resent or resist the policy). Second, this discussion will also be used to illustrate how these differing positions reflect differences in underlying assumptions.

The most significant underlying assumption which affects how the theorists treat the Quebec case concerns how culture is introduced into the liberal-democratic framework. As we have seen, Taylor and Kymlicka associate cultural concerns primarily with a group—nations and societal cultures respectively. This distinguishes their approaches from Carens's and Tully's, who introduce culture through individual interests, because it places the emphasis on how to address conflicts with outsiders and insiders on the nature of the group. Once this distinction is acknowledged, the difference between Taylor and Kymlicka on the question of whether

liberalism should be placed in a broader context of competing conceptions of justice or it should be treated as justice, comes to the fore.

Both Taylor's association of culture with the group and his placing of liberalism in the broader context of multiple modernities are implicit in his suggestion that Quebecois believe that "A society with strong collective goals can be liberal...provided it is capable of respecting diversity, especially when dealing with those who do not share its common goals". (1994, 59) Here we see culture associated with the group that is crucial to the identity and authenticity of its members. The French language appears as a collective good that is shared by, and constitutive of the identity of, community members, and thus worthy of protection. We also see the idea of multiple, rather than single, modernities in his comparison of this Quebecois view that of English Canadians who advocate a different, procedural, understanding of "rights-liberalism"(1994, 52).

Taylor's conception of multiple modernities is implicit in his defence of Quebec's sign laws against the criticism that they violate the liberal rights of both outsiders and insiders. On the one hand, having been characterized as a modern Western culture, Quebec must respect values of democracy and human rights of all its citizens. On the other hand, Taylor argues that Quebec's sign laws do not violate the human rights of non-francophone outsiders by denying the apparent conflict. He does so by drawing a distinction between fundamental liberties which must always be respected, and "privileges and immunities," like those concerning the language used on commercial signs, which do not. (1994, 59) Those who would criticize Quebec's sign laws, then, it seems, are working from the mistaken assumption that the conception of liberal justice embodied in their social imaginary is the only one possible (i.e., that modernity is monolithic).

With respect to conflicts with insiders or dissidents, Taylor's response reflects the constitutive relationship he has posited between individual identity and cultural community.

While not addressing the Quebec case in particular, he says that the person who objects to having to obey a law with which he or she disagrees can be answered: “something essential to your identity is bound up in our common laws...something of the order of cultural identity.” (2004, 191) Thus, within the very broad limitations of respect for human rights and democracy, dissidents may be required to comply with policies that protect the collective goods that define the community to which they belong. On Taylor’s view, it seems, the survival of valuable communities is simply not consistent with maximizing personal autonomy. We see this when he writes, “What does individual assent mean? Is it agreement by the individual in an identity quite independent of the community? Or by the individual who has come to live by the community goods? If the former, few communities would ever get started; if the latter, then the exit-veto option can’t be everywhere appropriate.” (1999, 112)

Kymlicka’s position compares nicely with Taylor’s. Like Taylor, he introduces cultural concerns through a type of group: the societal culture. As a national minority or ‘substate nation’ (2001a, 23), Kymlicka believes Quebec constitutes such a group, and thus may legitimately claim special accommodation. As a societal culture, he suggests, Quebec can only survive, he says, “if it has substantial powers regarding language, education, government employment, and immigration...[and] if it has some forum for collective deliberation and decision-making.” (1998, 33)

Given his foundational commitments to liberal justice, Kymlicka is less willing than Taylor to condone violations of the rights of insiders or outsiders. In fact, he has criticized Taylor’s justification as unnecessarily invoking talk of collective goods. (2001b, 287, n. 9) Not having endorsed ‘multiple modernities,’ he cannot appeal to different conceptions of ‘rights-liberalism.’ As such, he must characterize Quebec’s sign law as violating the rights of outsiders.

Apparently not happy with this conclusion, Kymlicka must devise an apology of sorts for this violation of rights. He does so by appealing to his conception of a singular liberal modernity. Liberals may accept Quebec's sign laws, he suggests, on the grounds that they are necessary to achieve a longer-term liberal purpose—ensuring that Quebec nationalism becomes a liberal nationalism and not an illiberal ethnic nationalism. The sign law can be seen as contributing to this goal, he says, by encouraging immigrants to assimilate into francophone, rather than anglophone, culture, and, thus, reducing the anxiety of Quebecois about the effect of immigrants on the survival of their cultural. (2001b, 286-288) Thus, given his commitment to a liberal conception of justice, Kymlicka cannot accept the possibility that Quebec's sign laws, as they affected non-francophones, might ever be just.

With respect to internal dissidents, Kymlicka's equation of liberalism with justice also leads him to a very different position from Taylor's. Having defended societal culture based on its contribution to personal autonomy, he argues that, with few exceptions, dissidents must be tolerated.¹⁷ This is reflected in his well-known distinction between legitimate 'external protections,' which protect a cultural group from the detrimental effects of those outside of it, and illegitimate 'internal restrictions,' which are "intended to protect the group from the destabilizing impact of internal dissent". (1995, 35) To the extent that sign laws constituted an external protection that also had the effect of creating an internal restriction on the freedom of expression of francophones, his commitments prevent him from defending them. Instead, he rationalizes them as "an unavoidable by-product of external protection". (1995, 44)

In sum, Taylor and Kymlicka's decisions to introduce culture through a group lead them to frame the question of how to treat conflicts with insiders and outsiders as an 'all-or-nothing'

¹⁷ He says limitations on individual rights can only be justified in extreme cases where the very survival of the community is at stake. 1995, 230 n. 1.

matter. Either the personal autonomy of insiders and outsiders must always be respected, or they may be overridden depending upon how liberal justice is defined in different modernities.

By introducing culture into their liberal-democratic frameworks as an individual interest, Carens and Tully are able to see conflicts more in terms of commensurable interests that may be open to compromise. The important differences we see in their approaches to national minorities in general, and Quebec in particular, are related to the positions they take concerning whether liberal democratic commitment to individual freedom and equality should be promoted by emphasizing individual rights or popular sovereignty.

Carens approaches the question of Quebec's language policy by focusing on the legitimate (although not necessarily morally decisive) cultural interest all individuals share in being able to use their own language in all spheres of their lives. This has the interesting effect that the group does not appear in Carens's argument the way it does in Taylor's and Kymlicka's. If Quebec's language legislation is morally permissible, it is not because the Quebecois fit some definition of a nation or societal culture, but because as a contextual matter, their numbers and concentration are such that "a formal education in their own language will open up a reasonable range of opportunities for most purposes". (83) It is this which differentiates Quebec francophones from immigrants living in Montreal, for whom this is not the case.

As a 'social choice' of a group of individuals who share a legitimate interest (132, 136), Quebec's language legislation does not enjoy the special status of a constitutive collective good, a *raison d'être*, or an external protection. This requires him to look elsewhere for a means of adjudicating conflicts that arise among individuals pursuing identical interests. This, of course, is where Carens's approach parts ways with Tully's. To promote the freedom and equality of individuals, Carens emphasizes individual rights in the forms of universal minimal moral

standards which can be legitimately violated only rarely. Thus, he argues that in pursuing its interests, Quebec's francophone majority must respect the similar interests of outsiders. On this basis, he says that while Quebec's legislation that required all signs be in French alone failed this test, the legislation as amended in 1993 reflected an 'evenhanded' balancing of "the interests of individuals in communication in their own languages (even in commercial contexts) and the interests of the French majority in the political community in creating a French linguistic landscape as part of its effort to secure the place of French in a North American context dominated by English." (127) While the question of internal dissidents does not feature in Carens's analysis, the solutions he offers for cases where the conception of a culture defended by an elite differs from the conception held by the people suggest a similar emphasis on minimal moral standards; these are the freedom of members to leave the community and the freedom to elect their leaders. (249)

Tully's position is very similar to Carens's in that he suggests that the proper approach to resolution is to conceive the conflict as one between commensurable interests of individuals; in this case interests in continuity: "If a valuable cultural difference is constitutive of the ways a person speaks and acts, then, . . . , not to recognise and accommodate it is the injustice of cultural imperialism, for it is to assimilate that person to different ways of speaking and acting without consent." (1995, 169)

When it comes to addressing conflicts with outsiders and insiders, however, Tully's rejection of the kind of modern constitutionalism that forms the basis of Carens's 'minimal moral standards' prevents him from adopting this approach. Instead he seeks to promote individual freedom and equality by appeal to ideals of popular sovereignty and consent. Thus, with respect to conflict between the francophone majority and anglophone and allophone minorities, he

suggests that in light of their shared interests in continuing to speak and express themselves in their native tongues, mutual recognition requires a search for accommodation. In this case he believes the Canadian Supreme Court found the right answer: “a commercial sign policy of French ‘always’ rather than French ‘only’ resolves the conflict.” (1995, 171).

Similarly, with respect to internal dissidents, rather than arguing that individuals must either be free to dissent or compelled to comply, he recommends that minority groups seeking special recognition first pursue internal “democratic negotiation and agreement which ensures that minorities *within* the group have the opportunity to have a say in the formulation of the demand so it accommodates the other aspects of *their* identity that matter to them.” (200b, 474) Consistent with his emphasis on popular sovereignty, such consideration does not require extending a veto to dissidents, as would be consistent with treating this as a matter of individual rights. By suggesting that group claims for recognition should have the support of a “clear majority” of group members, (2001a, 24) he implicitly recognizes that individuals may sometimes have to comply with cultural policies which they do not accept. Thus, he writes, “A free and democratic society will be legitimate even though its rules of recognition harbor elements of injustice and non-consensus if the citizens are always free to enter into processes of contestation and negotiation of the rules of recognition.” (2000b, 477)

In sum, this discussion demonstrates that that while there may be a general level of consensus on the claim that national minorities can legitimately claim special accommodation, this masks significant differences: in this case, how to address conflicts with outsiders and insiders. Further, we have also seen how these differences on practical matters can be traced back to deeper disagreements on questions of underlying foundations.

Definition of Communal Membership

Before leaving the topic of national minorities, I want to illustrate how discussion of the treatment of conflicts with insiders and outsiders serves to obscure the difficult question of how membership in cultural communities should be defined.¹⁸ The problem is that discussions of insiders and outsiders tend to be conducted on the assumption that the membership of the community is known; in other words, that we already know who the insiders and outsiders are. Let me make this more concrete: How do we know that the ‘dissenter’ that Kymlicka would have the community tolerate, is really not an outsider?; How do we know that the individual that Taylor would have accept a law he rejects, actually belongs to that community that created the law?; How do we know, if we follow Carens’s and Tully’s advice and use some system of voting to ensure that the majority of community members actually agree with community policies, who should be given, and those to be denied, a right to vote? Part of the problem may be an implicit tendency to treat membership in cultural communities as analogous to citizenship in modern states. It is certainly true that the problems I have noted do not tend to arise in states because states, by definition, have defined populations: to determine if someone is a dissident or an outsider, or if they have a right to vote, we need only ask if she is citizen.

Membership in cultural communities is not nearly so easy to determine, and almost necessarily gives rise to all sorts of controversies.¹⁹ Consider Kymlicka’s seemingly clear statement on this matter: “National membership should be open in principle to anyone, regardless of race or colour, who is willing to learn the language and history of the society and participate in its social and political institutions.” (1995, 23) Rather than clarifying matters, it really just opens the door to a frustrating degree of circularity. Consider this: to determine who

¹⁸ This is problem applies to the accommodation of all types of cultural group, not just national minorities. I only address it here to take advantage of the previous discussion.

¹⁹ Defining membership is necessary for more than distinguishing dissenters from outsiders. It is essential for determining who should participate in, and who can rightly be excluded from, a community and any special accommodations it has received. It is also important to individuals’ identities because a definition of the basis of membership in a community inherently suggests or precludes conceptions of the community and its purposes.

belongs, we need to know if they have learned the society's language and history; but to determine this, we need to know the proper form of the language and the correct (or at least not incorrect) version of the history; to do this we would need to ask members of the community; and this requires that we know who belongs to the community. In other words, to determine who belongs to the community, we need to know who belongs to the community. While it may seem otherwise, my intent is not to suggest the impossibility of defining membership in cultural communities, but rather to show that this is a matter that must be addressed directly.

c. Indigenous Peoples and Other Non-Modern Minorities: Square Pegs, Modern Holes?

With respect to indigenous peoples we again find broad agreement that their interests in cultural survival should be respected. The case is less clear with non-modern minorities like the Amish and Hutterite religious communities because not everyone has discussed them. While this position appears to fit well with Canadian practice, I will suggest that it does not fit nearly so well with the underlying assumptions of all the theorists with the exception of Tully.

The case is most clear with Kymlicka and Taylor given their assumptions about the inescapability of modernity, and the status of indigenous peoples and other non-modern groups as neither the products of modernity, nor universally inclined to accept it. There is a temptation to include them with national minorities, since, like nations, they tend to be territorially-concentrated cultural communities with ties to a historic homeland. This seems to be what Taylor does, as he makes no special dispensation for them, usually treating them as analogous to Quebec. Kymlicka comes closer to acknowledging this distinction when he subdivides national minorities into substate nations and indigenous peoples, but given his assumptions about modernization, he places their commitment to "a premodern way of life" in the (recent) past, and describes their aspirations as: "the ability to maintain certain traditional ways of life *while*

nevertheless participating on their own terms in the modern world." (2001a, 23-24, my emphasis)

A further problem for Kymlicka is one that he shares with Carens, given their treatment of liberalism as a universal conception of justice. This is a problem to the extent that indigenous and non-modern groups embody illiberal traditional societal patterns. For Kymlicka, the problem is that such cultures, either not supporting or even conflicting with personal autonomy, do not constitute societal cultures; as such, he can find no place in his theory. As we have seen, if there are to be reasons for tolerating them, they must lie outside of his justificatory structure in broader principles like that of honouring historic agreements. (1995, 170) The case is similar for Carens. While he is much more willing than Kymlicka to recognize and support the human goods that may be realized in non-modern cultures, (202) by placing of such recognition within a commitment to liberal-democratic norms defined as minimal moral standards, he can only "defend limited departures". (250) The inability of these approaches to accommodate the aspirations of indigenous and non-modern minorities on their own terms results from underlying assumptions about the status of modernity and liberalism as a conception of justice.

Tully is able to offer the possibility of accommodating indigenous and other non-modern groups on their own terms, while maintaining consistency with his underlying assumptions, because he refuses to presuppose the superiority of either modernity or liberal conceptions of justice. As we have seen, he challenges the superiority of modernity by attempting to locate principles of justice on the intercultural common ground. Similarly, unlike Kymlicka and Carens who try to promote individual freedom and equality by emphasizing liberal rights, Tully emphasizes popular sovereignty and consent. This permits him to respond to concerns that only liberal rights can protect group members from abuses of power, by suggesting that when the

convention of consent is made the test of the legitimacy of authority within the group, “the normative problem of a despotic elite dissolves”. (1995, 195)

In sum, I think much would be clarified and theoretical consistency would be gained, if it were accepted that it is inconsistent to advocate both the accommodation of indigenous and non-modern groups and the superiority or inevitability of modernity or liberal justice.

d. Immigrant/Ethnic Minorities: Cultures Without Nations

General consensus is also present in the idea that members of ethnic or immigrant groups can justly claim certain forms of recognition on account of their cultural identities, but that the kinds of recognition they can justify falls short of those that can be made by national minorities. For example, it is generally agreed that while ethnic minorities cannot claim self-government rights, they are justified in claiming rights to use their language and live according to their traditions in their private lives and to demand alterations of the welcoming society’s public culture so that they can integrate without having to abandon their cultural identity. Here again, I wish to establish that this consensus on policy positions fits better with some theorists’ underlying assumptions than others’.

It should not be surprising that ethnic and immigrant minorities pose the most serious problems for Kymlicka and Taylor who introduce cultural concerns into their arguments through specific types of groups. For Kymlicka, for instance, the fact that immigrants and ethnic groups do not constitute societal cultures—combined with his belief that it is not possible, desirable, or desired to reproduce the societal cultures they left behind in their new homeland (1995, 114)—means that their cultural interests must be introduced in some other way. He does this by arguing from their interest in personal autonomy which requires them to have access to some societal culture. Since they cannot have access to the societal culture that they, or their ancestors, were

born into, justice requires, he suggests, that they be enabled to integrate into a viable societal culture in their new state. While this argument could be used to justify assimilation, Kymlicka argues instead for a form of multicultural diversity. As a matter of fairness, and to ensure the success of integration, he says “we need to ensure that the terms of integration are fair”. This amounts to providing special accommodations to immigrants on a transitional basis in recognition that “integration does not occur overnight,” and reforming the “common institutions into which immigrants are pressured to integrate to provide the same degree of respect, recognition, and accommodation of the identities and practices of ethnocultural minorities as they traditionally provided for the dominant group.” (2001a, 34) While this may be reasonable, and it certainly reflects current Canadian practice, it also appears to draw upon a concern for cultural identity which Kymlicka’s appeal to societal culture cannot support: as Carens notes, since immigrants and ethnic groups do not, by definition, form societal cultures, “it is not clear why immigrants are entitled to any special rights to maintain their distinctive cultural commitments.” (56-57)

While immigrants must pose similar challenges to Taylor’s theory, given that they do not constitute nations, claims about the legitimate rights of immigrants and ethnic groups can be more consistently defended in Taylor’s approach given his emphasis on a modernity which values authenticity and popular sovereignty. Assimilation can be rejected as a method for integrating newcomers based on respect for their authenticity and identity; assimilation, Taylor suggests, says “as you are, or consider yourselves to be, you have no place here; that’s why we are going to make you over.” (2003b, 23) Further, unassimilated minorities cannot simply be marginalized or excluded because this “goes against the legitimacy idea of popular sovereignty, which is to realize the government of **all** the people.” (2003/2004, 18, emphasis in original) To

realize the government of all the people, requires “struggling towards a creative redefinition of our political identity” by sharing “identity space.” Thus, Taylor can argue with consistency that in societies which have received immigrants, “some historically hallowed definition[s]” of the community’s identity may have to be compromised or reworked to allow for the self-recognition of newcomers. (2003/2004, 18-20)

Immigrants and ethnic groups do not pose nearly the same challenges for Carens and Tully, given their decision to introduce cultural concerns through individual interests. As we have already seen, this enables Carens to justify the claims of ethnic minorities on the same basis same as he justifies those of minority nationalities. For Carens culture and identity claims do not appear so much as matters of thresholds (e.g., group is/is not a societal culture) as of a continuum: for instance, “as the number of immigrants speaking a given language in a given area increases, the justification for not having public service providers who speak the language decreases”. (86) Tully arrives at a similar position based on respect for the individual’s interests in continuity as well as his claim that freedom requires a constitution to which everyone could consent. (1995, 7)

In sum,...

e. Other Groups: Identity Interests or National Cultures?

The final type of group I wish to address consists of those that may sustain shared ‘cultures’ and identities, but are clearly not cultural, in the ethnic or national sense, such as gay/lesbian culture, working class culture, women’s culture. This is one type of group for which there is no consensus at all. Given the different conceptions of legitimate claim-making groups arising on the different underlying assumptions, it should not be surprising that there is disagreement whether arguments used to justify accommodation of ethnocultural groups can legitimately be

extended to other types of groups. Again, the main distinction arises from the way culture is introduced into the theories.

Not surprisingly, Kymlicka and Taylor have the most trouble since these other groups clearly do not constitute societal cultures or nations. For instance, in considering gay culture, Kymlicka concludes it is not relevantly analogous to societal culture: while, he suggests, people born and raised in a societal culture “think of their life chances as tied up with participation in [that culture’s] societal institutions”, this is not true of people who enter the gay community. The position of gays, he concludes, is more analogous to that of immigrants; they do not want to leave their societal culture, but to make it more inclusive of their differences. (1998, 98)

While Taylor is more open to the suggested analogy, I am not convinced that the position he stakes out really works. Taylor has acknowledged that his argument, resting as it does on appeals to dignity and recognition, does not apply exclusively to national cultures: “Modern nationalist politics is a species of identity politics. Indeed, the original species: national struggles are the site from which the model comes to be applied to feminism, to struggles of cultural minorities, to the gay movement, et cetera.” (1997, 46) Of his focus on nations, he writes, “What concerns me here is the way that a case of this kind can be made in relation to an ethnic or linguistic group.” (1997, 42) While I think Taylor is right to acknowledge these similarities, I think this cannot be pursued consistently within his theoretical framework because it is not at all clear how the connection between nation, identity, and self-government could be extended to groups like feminists and gays.

As with immigrant and ethnic minorities, Carens and Tully’s primary focus on individual interests allows them to extend their theories to include these other groups. For instance, Carens accepts that “ethnicity, gender, sexual orientation, and disability are all examples of factors that

may be relevant to one's personal identity and may be linked to a sense of personal identity that is morally and politically relevant." From this perspective, the key difference between these groups and "cultural groups" (100) that "think of themselves as nations or national minorities" is not constitutive, but a matter of claims to different kinds of accommodations; thus, unlike cultural groups, these other groups "are not usually described or experienced as *political* communities, that is as groups that possesses (or aspire to) extensive self-government." (167) For similar reasons, Tully is able to apply his argument to a variety of groups, ranging from nations or peoples to multicultural minorities to cultural feminists. (1995, 2-3)

In sum, then, Part II has suggested two sources of continuing controversy that should form the basis of further thought on matters of rights and ethnocultural diversity. One is the continuing disagreements that underlie the general consensus on the relevant groups and the claims they can make. These disagreements, it has been suggested, can be traced back to more fundamental disagreements about underlying assumptions; thus it is here that we must look if we seek resolution. The second source of continuing controversy lies in matters that the theorists' approaches serve to collectively obscure, like the unwillingness to directly address the problem of defining membership in cultural communities. We will now see in Part III that similar issues arise with respect to questions of social unity.

III. Social Unity

The question of how social unity is to be sustained under conditions of ethnocultural diversity is of obvious importance to Canadians given Canada's troubled history in these matters, especially in francophone-anglophone and aboriginal-non-aboriginal relations. A lesson which all of the

theorists have explicitly drawn from the Canadian experience is that whatever threats recognition of diversity may pose to the unity of the state, they cannot be any worse than those that arise from attempts to sustain unity by enforcing uniformity. (**REFERENCES:** Tully, 1995, 196; Carens, 193-194;) This, of course, naturally raises the question of how social unity is to be fostered and sustained under conditions of ethnocultural diversity.

Here again we find a high degree of consensus. The theorists generally agree that justice in states characterized by ethnocultural diversity will require that the basis of unity go beyond mere *modus vivendi* and must be based on shared identity, at least in the sense of a shared identification with the same state. (Kymlicka 1995, 188; Taylor ???) The reasoning is simple: the kinds of group-differentiated accommodations that are advocated require a strong “sense of common purpose and mutual solidarity”. As Kymlicka writes: “Democratic nation states which recognize self-government rights are, it appears, inherently unstable for this reason. At best they seem a *modus vivendi* between separate communities, with no intrinsic bond that would lead the members of one national group to make sacrifices for the other.” (1995, 182) The challenge, he suggests, is to determine whether and how cultural minority rights can be made “consistent with the long-term requirements of a stable liberal democracy, including the requirement of a shared civic identity that can sustain the level of mutual concern, accommodation, and sacrifice that democracies require.” (1995, 173-174)

The question to which we now turn is where to look for the basis of such an identity. As Kymlicka notes, the sources of shared identity typically associated with culturally homogenous nation-states—“commonality of history, language, and maybe religion,”—are, by definition, lacking in states characterized by ethnocultural diversity. (1995, 188) Such states require some other basis for this shared identity. In what follows, I consider two possible bases for this shared

identity, one which seeks to foster it, one which seeks to discover it: intercultural dialogue and historical narrative.

a. Creating Shared Identity Through Intercultural Dialogue

One cannot help but be struck by the amount of hope which is placed in this literature on the idea that a shared identity suitable to sustaining the unity of ethnoculturally diverse states can be expected to result from intercultural dialogue. In what follows, I will explore this idea of dialogue and, especially, consider issues that raise questions about its viability as a solution to the problem of unity. I begin by noting how each theorist introduces dialogue into his approach and asking how well this fits with his underlying assumptions. I then turn to questions of motivation: in particular, why majority and minority groups would be willing to engage in intercultural dialogue. In the process of this discussion, I note another question which has been obscured by all of the theorists' positions: why should the unity of such states be presumed to be a desirable goal? Finally, I set aside these concerns and consider whether intercultural dialogue is practical.

i. Intercultural Dialogue and Underlying Assumptions

In this section I continue the argument I began in Part II concerning the importance of underlying assumptions. In this case, I want to show that while all the theorists recommend intercultural dialogue as a means to accommodate the cultural claims of minorities,²⁰ and thus to enhance social unity, this position fits better with the underlying assumptions of some theorists than of others. Here, the second and third questions are crucial. Those approaches which place liberalism in a broader context of conceptions of justice and emphasize popular sovereignty are best able to make sense of the purpose of intercultural dialogue.

²⁰ This suggests another function of dialogue which I have not chosen to pursue in this paper: a means for determining which groups deserve which accommodations. Here appeal is typically made to such procedures as negotiation, compromise, and deliberative democracy. (e.g., Kymlicka 1995, 141; Taylor 2004/2004, 20)

Taylor's association of popular sovereignty with "shared identity space" creates a seamless transition from the justification of cultural accommodation to shared identity as the basis of social unity. Popular sovereignty requires the government to be the government of all the people. This is only possible where the collective agency reflects the interests of all citizens. Under conditions of ethnocultural diversity, citizens must be able to recognize their authentic identities in the political identity that animates the collective agency. Thus, the very process of negotiating cultural accommodations creates the shared identity which provides the social unity to the state.

Taylor has illustrated what this might look like in practice in Canada in the idea of 'deep diversity.' (1993b, 182) Where citizenship is characterized by deep diversity, individuals will have different ways of belonging to the state. This differentiated citizenship will, in turn, be structured according to the types of groups that constitute the diversity. Here Taylor draws a distinction between convergent values and partnerships. The relationship between national groups in the state is one of partnership; that between nations and immigrants/ethnic minorities one of convergent values. Thus, some will belong to the state directly as individuals through convergent aspects of political identity; this will include members of the dominant majority ("Dans la majoritie, cette societie present une unite convergente peu commune") (1996, 361) and ethnic minorities ("Someone of, say, Italian extraction in Toronto or Ukrainian extraction in Edmonton might feel Canadian as a bearer of individual rights in a multicultural mosaic. His or her belonging would not 'pass through' some other community, although the ethnic identity might be important to him or her in various ways."). (1993b, 183) Others will belong to the state indirectly through the mediation of a community which participates in the shared political identity through a relationship of partnership.

Here the ideals of popular sovereignty, authenticity, and dignity converge; there must be some shared core purposes and values which are shared by the citizens of the state (or substate unit) if the notion of a sovereign people is to have any traction. Further, these shared purposes, even in cases of partnership, must reach deeper than *modus vivendi*. Not only must the shared political identity leave space and create opportunity for individuals and communities to pursue their goal of survival for their cultural communities, this goal should form part of the shared identity of all citizens of the state, whether or not they are members of the cultural community.²¹

Besides its contribution to social unity, another strength of Taylor's intercultural dialogue also fits nicely with Taylor's placement of liberal conceptions of justice in the broader context of multiple modernities. This suggests the possibility that every culture's account of justice may be partial and incomplete. We see this when he writes, "Liberalism is not a possible meeting ground for all cultures, but is the political expression of one range of cultures, and quite incompatible with other ranges." (1994, 62) In this context, it is obvious that different cultures might have something to learn from each other. Thus, a process of dialogue and mutual understanding (2004, 196), the aim of which is to develop a "fusion of horizons" (1994, 67), makes eminent sense.

Intercultural dialogue makes sense in Tully's account for similar reasons. Both suggest popular sovereignty requires a political identity with which all citizens can identify: only a constitution which embodied this common constitutional language could achieve the consent of a

²¹ This is illustrated in Taylor's characterization of Canada's failed Meech Lake constitutional amendment as having been about making the 'promotion and preservation of Quebec's distinct character' part of the Canadian (not just Quebecois) answer to the question 'What is a country for?' (2000, 7) Similarly, from the Quebecois perspective, he has written: "Supposing that we saw that we could best preserve these [our common values and purposes] together, we might even allow ourselves to see that what is specific to each component—yes, even the French language in Quebec—can more effectively be defended within a broader Canadian frame." (1993a, 199) It is interesting that this sentiment appears to be expressed in the English Canadian premiers' Calgary Declaration of September 1997. Point 5 reads, in part: "In Canada's federal system, where respect for diversity and equality underlies unity, the unique character of Quebec society, including its French-speaking majority, its culture and its tradition of civil law, *is fundamental to the well-being of Canada.*" (Emphasis mine) Quoted in Rand Dyck, *Canadian Politics: Critical Approaches* (3rd ed.), 392.

culturally diverse citizenry. A difference, however, is that while Taylor presents this as something which citizens actively create, Tully's appeal to the intercultural common ground suggests something that citizens' discover. Also, like Taylor, Tully also sees this as contributing to social unity:

The mutual recognition of the cultures of citizens engenders allegiance and unity for two reasons. Citizens have a sense of belonging to, and identification with, a constitutional association in so far as, first, they have a say in the formation and governing of the association and, second, they see their own cultural ways publicly acknowledged and affirmed in the basic institutions of their society....If these two conditions are not met, the association is experienced as an alien and imposed yoke that suppresses the members' liberty and cultural identities, causing resistance and disunity. (1995, 197-198)

By seeking justice in the overlap between cultures, and thus rejecting accounts of cultures as "closed and homogenous", Tully believes that questions of relativism and universalism are not generated. (1995, 14) Thus precluding presumptions about the superiority of any conception of justice, liberal or otherwise, intercultural dialogue is given a clear and obvious purpose: the identification of these common elements.²²

The ultimate purpose and value of intercultural dialogue is much less clear with Kymlicka and Carens given their association of liberalism with justice and the emphasis they place on liberal rights. This is most clear with Kymlicka. He argues that to "promote a shared sense of solidarity and common purpose in a multinational state" we must recognize that "People from different national groups will only share an allegiance to the larger polity if they see it as

²² Of course, there are obvious concerns about this intercultural common ground which makes sense of Tully's account of intercultural dialogue. On the one hand, we have no assurance that the overlap he posits actually exists. On the other hand, even if it does, we must still be concerned whether the overlapping values "are sufficiently powerful to outweigh the other elements in the culture." (Carens, 42) This second concern is reinforced by Tully's own observation that the language of common constitutionalism has been overpowered by modern constitutionalism.

the context within which their national identity is nurtured, rather than subordinated.” (1995, 189) Dialogue enters this account when he considers how liberal societies should interact with non-liberal societies, whether embodied in external states (2001b, 62) or internal minorities. (1995, 171-172) Rejecting the idea that liberals “are entitled to impose” their views on non-liberal groups, he says that liberals should engage in “dialogue” with them in a “search for shared understandings.” (2001b, 62-63) This appeal to ‘dialogue’ raises troubling questions, however, which I don’t think can be adequately addressed within his framework.

Given that Kymlicka has associated his conception of liberalism with justice (1995, 168), it is not at all clear what ‘shared understandings’ could emerge be expected to emerge. As Tully has written, if one moral “language or tradition gained ascendancy in a constitutional negotiation, it would cease to be a dialogue at all.” (1995, 57) Thus, while Kymlicka has said he does not want to enter the debate on cultural relativism (2001b, 89), I cannot see how he can avoid it.

I find that his attempts to address this only raise further questions. Kymlicka’s reference to *meaningful* dialogue in the following passage suggests that he does believe new, shared understandings are possible: “I take it as profoundly important for such a dialogue that ‘we’—the liberal majority—have a clear idea of what our own liberal principles entail on questions of minority rights....This will then help us to identify the real points of disagreement with other non-liberal groups, and thereby have a meaningful dialogue.” (2001b, 62-63) While this suggests a purpose for intercultural dialogue, I cannot see how it can be reconciled with the claim that illiberal practices are unjust.²³ What new, shared understandings about justice could possibly emerge from dialogue with those, who by definition, are unjust.

²³ One possibility is to suggest that while a life characterized by personal autonomy is one type of human good, there are equally valuable human goods that cannot be realized in modern, ‘autonomy-enhancing societies.’ This approach

Another concern has to do with the implicit essentializing of the ‘West’ as a liberal monolith in this appeal to dialogue. Who is this “‘we’—the liberal majority”? (2001b, 62-63): a majority of Westerners who are assumed to share liberal values?; the dominant cultural community in the multination state, which is presumed to be uniformly liberal? If it is the latter, this is clearly false. If it is the former, I think this would associate the moral status of liberalism too closely with its popularity for it to be able to serve the purposes Kymlicka wants it to.

Further, once it is established that those outside the ‘liberal majority’ may have non-liberal views on justice that deserve a hearing, what effect does this have on the moral authority of the liberal majority to impose liberal solutions on non-liberals with whom they share a culture? One way out of this problem is to suggest that the moral superiority of liberal principles is a constitutive aspect of modern Western societies. This is basically what I have suggested Taylor does. It is not available to Kymlicka, however, given his opposition to defining communities in terms of collective goods.

Given all these problems, it is not surprising that Kymlicka considers what should be done in the event that agreement cannot be reached on “fundamental principles”. In such cases he advises that groups must find “some other basis of accommodation, such as a *modus vivendi*” which could involve exempting the illiberal minority from the obligation to respect liberal rights in its dealings with individual group members. (1995, 167-168) This, of course, brings us back to question of shared identity and social unity. In sum then, I believe Kymlicka would be on surer ground were he simply to assert the universality of liberal justice and to deny the necessity or usefulness of intercultural dialogue. If he is unhappy with this, then I think he needs to revisit his assumptions about liberalism, modernity, and justice.

seems to require appeal to a common value that underlies the various human goods realized in liberal and illiberal societies. Something like this has been advanced by Joseph Raz, the underlying value being well-being. (1986)

Carens's willingness to recognize human goods in non-modern cultures can make more sense of intercultural dialogue than Kymlicka's approach (at least dialogue between modern and non-modern cultures). The connection he draws between intercultural dialogue and social unity is clear in the following passage:

If we start instead from the assumption that aboriginal and non-aboriginal Canadians both care about justice but think about it differently, and if we try to explain ourselves to each other, we might arrive at arrangements that feel like more than a satisfactory bargain, arrangements that combine mutual compromise and mutual understanding in ways that create genuine common bonds. And that is the sort of basis on which a shared identity could be built, and eventually perhaps even a genuinely shared citizenship.

My ideal of differentiated citizenship thus entails a dialogue between aboriginal and non-aboriginal people over the meaning of justice. A dialogue over justice is not an instrumental arrangement. Rather it is the kind of relationship that, when it works, gives rise to mutual understanding, mutual trust, and mutual concern. (197)

Here my concern is not that one culture is defined as just and the other unjust (although this does seem to be the case in relations between liberal and illiberal *modern* cultures). Carens's views in the passage cited above are reinforced by his claims that Western thought should not be "put forward as the one right way to think about these issues" and his characterization of his own purpose, much like Kymlicka's of his, is to develop a non-aboriginal perspective on justice and ethnocultural diversity "to contribute to a conversation in which aboriginal authors also participate from their own perspectives." (180)

Rather, my concern is that he has defined modern and non-modern cultures, in part at least, by their differing relationships to liberal conceptions of justice. Thus, liberalism is justice

in moderns cultures; non-modern cultures have their own conceptions of justice; what is there to talk about? While it would be coherent to suggest the possibility that dialogue is intended to discover a conception of justice that lies behind both modern liberal and non-modern conceptions of justice (which is what Tully does), Carens does explicitly not suggest this.²⁴

The relationship between justice in modern and non-modern cultures having been left unclear, it is not surprising that Carens, like Kymlicka, entertains the possibility that dialogue about justice may not result in “mutual understandings and mutually acceptable compromises.” (197) Unlike Kymlicka, however, he does not elaborate about what to do when dialogue fails.

In sum, we have seen how the suggestion that intercultural dialogue offers the best hope for creating social unity under conditions of ethnocultural diversity, while widely shared, does not fit nearly so well with some theorists’ underlying assumptions as with others.

ii. Intercultural Dialogue: Where’s the Motivation

A very different concern about these theorists’ discussion of social unity involves the way they treat the borders of extant modern states as constraints, and thus obscure the question of the moral status of these borders. While I noted this problem in Part II. a., I want to explore it a little further in the context of questions of social unity and suggest why this should probably receive more attention than it has. While it may not be surprising that, as English Canadians concerned with Canadian unity, these theorists would treat the existing state as given, it is surprising that they would do so as political philosophers. This is especially true in light of the fact that all are aware of the possibility of secession as a method for achieving greater social unity.

Uncritical acceptance of existing state borders is all the more surprising given the obvious drawbacks to maintaining existing multicultural states. From the majorities perspective,

²⁴ While he does not explicitly suggest it, he does go to great lengths to refute the suggestion that there are “deep cultural differences about the nature of justice” between North Americans and traditional Fijians. (220-222)

the need to compromise traditional and ‘hallowed’ conceptions of the state-level community cannot generally be considered an optimal outcome. This opinion is actually reinforced by a reason Kymlicka offers for why dominant groups may benefit from engaging in intercultural dialogue and accepting the outcomes. By recognizing the rights of minority nations and allowing them to enjoy self-government, Kymlicka suggests, the majority will find that it has freed itself to “act as a nation” as well.²⁵ But, we must ask, if what each nation really wants is to be free to act as a nation and to pursue its collective goals, should our first imperative not be to recommend secession wherever it is a viable option?

In thinking about the minority’s perspective on intercultural dialogue and power relations, I am reminded of John McGarry’s suggestion that the claim that “minorities should prefer devolution over federation because of its flexibility... requires a rather benign view of majoritarianism”. (2002, 420) As with the majority, the obvious reasons a minority would engage in dialogue with the majority culture are not very appealing—to make demands for special accommodations, rights or privileges; to defend any accommodations they may have won from encroachments; to protect their interests and identities from being marginalized; to overcome systemic discrimination. (1995, 144) In short, a minority has the greatest interest in participating in intercultural dialogue when it is presupposed that the majority is in a legitimate position to impose its will on the minority.

This picture is further darkened if we consider that these dialogues are likely to be conducted in the language of the majority, a language which presupposes its values and

²⁵ As an example, he says of the dominant English-speaking community/nation in Canada that they must be shown “not only that the dream of a common national identity is impossible to realize, but also that it is not worth aspiring to.” (1998, 154) This recognition of self-interest would motivate recognition of the claims of Canada’s minority nations because, having recognized themselves as a nation, English-speaking Canadians “would also understand that these interests are not shared by other Canadians.” (1998, Chapter 12, 159) This has much in common with Taylor’s claim that it is legitimate for the francophone community in Quebec to use the state to pursue its collective goals, “provided it is capable of respecting diversity, especially when dealing with those who do not share its common goals”. (1994, 59)

conceptions of justice. This will be a particular concern where non-modern minorities engage with liberal majorities. Not surprisingly, Tully is the most concerned with this possibility:

if there is to be a post-imperial dialogue on the just constitution of culturally diverse societies, the dialogue must be one in which the participants are recognized and speak in their own languages and customary ways. They do not wish either to be silenced or to be recognised and constrained to speak within the institutions of interpretation of the imperial [modern liberal] constitutions that have been imposed upon them. (1995, 24)

Given these concerns, it would not be surprising if secession appeared an optimal solution.²⁶

Finally, from the perspective of both minority and majority, why, as Kymlicka has suggested, should we expect them to find working together to build a society based on deep diversity through intercultural dialogue “exciting and an object of pride”, and not simply wearying. (1995, 190) In light of these drawbacks, the answers that groups should pursue intercultural dialogue because justice requires it and because it will promote social unity appear to miss the point: in many cases, justice only requires it, and social unity is only a concern, because of the refusal to consider to redraw the boundaries of the state.

This concern is not alleviated when we consider the reasons Kymlicka gives for setting aside secession as an option for addressing problems of social unity in multinational states. He offers three reasons in support of his claim that “secession is not always possible or desirable”: “Some national minorities, particularly indigenous peoples, would have trouble forming viable independent states”; “In other cases, competing claims over land and resources would make

²⁶ Given Tully’s general disposition on these matters, I was very surprised by his treatment of two aboriginal boat metaphors for aboriginal-non-aboriginal relations in Canada. These were Bill Reid’s *spirit of Haida Gwaii* which depicts thirteen spirit creatures representing different cultures and identities, engaging in dialogue and paddling the same boat. (1995, 24-25) The other, the Haudenosaunee (Iroquois) two row wampum, presents a very different image of two boats, one for aboriginals the other for non-aboriginals travelling in the same river. (Tully 1995, 128) While Tully emphasizes a similarity in the metaphors—he thinks both symbolize “mutual recognition of equality” and “travelling together,” one in the same boat, the other in the same river—I was struck by the difference between sharing a river (territory) and sharing a boat (state).

peaceful secession virtually impossible”; and finally, “there are more nations in the world than possible states, and since we cannot simply wish national consciousness away, we need to find some way to keep multination states together.” (1995, 186)²⁷ While these points are valid in many cases, they do not justify downplaying secession as a useful tool. On the one hand, while these reasons apply in many cases, they do not apply in all. For instance, and I don’t think coincidentally, they do not present insurmountable barriers to the secession of Quebec or, perhaps, Nunavut from Canada. The standard response that issues of ethnocultural diversity would reappear in the new states ignores the fact that significantly smaller compromises would be required of the English-Canadian and Quebecois nations, than in a united Canada. On the other hand, where secession is truly not a viable option for reasons of territorial intermingling of groups or competing claims to the same land or resources, Kymlicka’s analysis misrepresents the problem as one of *keeping* “multination states together.” The problem is not one of keeping them together; rather it is that of finding a just and desirable way to live together, given that they can’t be separate. In this regard, I prefer Taylor’s suggestion that the coexistence of different peoples in the same state is “always grounded in some mixture of necessity and choice”. (2003/2004, 20)

Given all these problems, I think we all deserve a better answer than we have received so far for why existing state borders are not be subjected to moral criticism. I say this, not because I am a sovereigntist or proponent of secession, but precisely because I am not. With respect to those cases, and I agree there are many, where secession is not an option, more work also needs to be done to address problems of power imbalances in existing states, especially from the perspective of minorities. In this regard, I think Kymlicka and Straehle point us in the right

²⁷ To be fair, he does write: “Perhaps we should be more willing to consider secession... There is every reason to think that any future secession of Quebec from the rest of Canada would” be peaceful and result in “two healthy liberal democracies where there used to be one.” (1995, 186) My point is not that he doesn’t consider this, but that he doesn’t make it a significant part of his theory. [NEED TO TAKE A LOOK AT HIS PAPER ON SECESSION]

direction by recognizing the dangers of majoritarianism and raising the possibility of international adjudication by asking: “If human rights and minority rights must be integrated at the domestic level, rather than through a single international code, can we find an impartial body to adjudicate and enforce these rights at the domestic level?” While they do not explore it in any detail, they suggest that “it would be preferable if all governments—majority and minority—are subject to some form of international scrutiny.” (2001b, 87) Elsewhere, Kymlicka has called for the development of a political theory that can help us to better conceptualize relations between minorities, states, and transnational institutions.²⁸ Tully touches on similar issues when he suggests that “sovereignty is limited by a degree of interdependency on, but not subordination to, international relations of various kinds.” (1995, 194) Of course, a full exploration of these issues will require abandoning the treatment of the modern state and its borders as a constraint.

iii. Is Intercultural Dialogue Practical at the Societal Level?

Another concern with the idea of intercultural dialogue is that it may impose impractical demands upon citizens. Consider this: in considering Taylor’s idea of deep diversity, Kymlicka writes: “Taylor is pointing in the right direction...For citizens to want to keep a multination state together, therefore, they must value, not just ‘deep diversity’ in general, but also the particular ethnic groups and national cultures with whom they currently share the country.” (1995, 191) While this suggests a clear purpose for intercultural dialogue—how else are people to identify with a political identity that includes the aspirations and values of cultural communities with which they share nothing except residence in the same state?—it also suggest an obvious problem: how is such a dialogue to be carried on among citizens of any state with any moderately sizable population, geography, and level of cultural diversity?

²⁸ Will Kymlicka and Christine Straehle. “Cosmopolitanism, Nation-States, and Minority Nationalism: A Critical Review of Recent Literature.” *European Journal of Philosophy* 7 (1): 65-88.

One alternative, some form of consociational arrangement, that would address problems of population and geography, is not compatible popular sovereignty, at least as it has been conceived in this literature. It seems to me that the kind of deliberative dialogue in which people develop a common political identity through a transformative process of debate and exchange of ideas is possible among a small elite who can actually be in a position to devote the kind of time to this exercise that it requires.²⁹ The problem is that while it may be true that all members of all cultural groups *would* consent to the arrangements to which such representative elites agreed had they engaged in the same deliberative discussions themselves; not having actually engaged in the deliberations, there is no reason to expect them to actually consent. This concern is only reinforced when Tully, discussing the value of dialogue, writes: “It is certainly true that we cannot understand culturally different others simply ‘by representing to ourselves imaginatively the many perspectives involved’, any more than I can master tennis by imagining various exchanges. Understanding comes, if it comes at all, only by engaging in the volley of practical dialogue. *We need the dialogue itself*”. (1995, 133)

Kymlicka has raised another possible means for fostering shared identity—socialization, particularly through formal education—but this also faces serious limitations. In particular, he suggests using public education to foster both “‘patriotism’, the feeling of allegiance to a state, and national identity, the sense of membership in a national group”. (1995, 13) Thus, he writes, “In multination states, then, citizenship education typically has a dual function—it promotes a national identity within each constituent national group, defined by a common language and history, but it also seeks to promote some sort of transnational identity which can bind together the various national groups within the state.” In a more recent article, however, he has drawn on

²⁹ It may be reasonable to describe the Meech Lake and Charlottetown Accords as having resulted from just such a process and, similarly, from having suffered the predictable results.

the idea of opacity in a way that challenges the possibility of developing a shared identity in which citizens come to value each other's cultural projects. In a discussion of multinational states and education, he says that under conditions of deep diversity the challenge of education for intercultural citizenship "is learning how to interact in a constructive manner with one's neighbouring groups and to try to overcome the legacies of mistrust and oppression that often strain local inter-group relations." The motivation for this commitment, he suggests, must be an obligation or duty to do what is required to uphold justice, (2003, 161) not, it seems, sustaining or creating some shared identity; "What matters is not that we understand or appreciate *the content* of other people's deeply-held beliefs, but rather that we understand and appreciate the fact that they *have* deeply-held views that differ from ours." (2003, 164) When we acknowledge "the (partial) opaqueness of cultural differences," Kymlicka suggests, we are better able to recognize "the necessity for groups to speak for and govern themselves, and the necessity of finding ways of co-existing that can be accepted by all." (2003, 164) The model of unity that this seems to imply, then, is more akin to the *modus vivendi* that he had earlier expressed a desire to avoid: "Even with self-government rights, indigenous peoples and the larger society must still talk to one another, cooperate in various institutions, and negotiate forms of collective action. But under conditions of deep diversity, these discussions may often be more a matter of bargaining and negotiation than of genuinely shared deliberation or mutual understanding." (2003, 164) While perhaps more cognizant of the real limitations on developing cross-cultural understanding, this position appears to challenge the very possibility of a shared political identity that popular sovereignty in multicultural societies has been suggested to require.

In sum, while much emphasis has been placed upon intercultural dialogue as a means of developing social unity and the shared identity that popular sovereignty seems to require, there are clear problems with this approach that need to be addressed before it can offer any real hope for addressing problems in multicultural societies. These range from problems of establishing a purpose for such dialogue in the context of some theorists' underlying assumptions, to concerns about the necessity of dialogue being rooted in an uncritical stance toward the borders of existing states, to, finally, questions about the practical possibility of intercultural dialogue in the context of large modern states.

b. Discovering a Basis for Unity: Nation as Narrative

To focus on intercultural dialogue as a basis for social unity, it seems to me, is to conceive of social unity under conditions of ethnocultural diversity as something that needs to be created. A promising alternative (although not mutually exclusive) vision of the basis of political shared identity differs in that it conceives the bases of social unity more as something to be discovered. While I do not think this vision has been explored in the nearly the same detail as that of dialogue, some examples of what it could mean are present in the present literature.

Perhaps the most striking image of what this might amount to is suggested in Tully's consideration of Bill Reid's sculpture *spirit of Haida Gwaii*. It depicts thirteen spirit creates representing different cultures and identities, engaging in a dialogue while paddling one boat. Tully describes their relationship as a "conversation," which, it seems, is partly constitutive of their identities. "They exist as they are, in all their distinctiveness, not in spite of, but in virtue of, their interdependency over time and history. These aspects are embodied in the endless ways in which they overlap and criss-cross without losing their identities". (1995, 24-25) This suggests a certain basis for unity in the way in which the identities of the members of each group are

defined in part by their *relationships* with the members of other groups within the same political community. This idea of the state as the context for a continuing ‘conversation’ which forms part of the background against which individuals define their identity is also suggested when Kymlicka notes approvingly that “Jeremy Webber argues that Canadians are... united by their participation in what he calls the ‘Canadian conversation’. He argues that English, French, and Aboriginal people grow up listening to this conversation, and that it becomes a part of all our identities.”(1998, 174, 175)

I find this interesting, and promising, for several reasons. First, unlike the appeal to intercultural dialogue, it presents shared political identity as something that might have an existence independent of our willed attempts to foster it. Second, it suggests a reason for maintaining the borders of the existing state, even if secession is possible: it sustains the context for constitutive conversations: “That specific debate is ours, one we know and care about.” (Webber, in Kymlicka 1998, 176) Finally, it suggests a reason beyond a commitment to justice for dominant or majority groups to engage in serious deliberations with minorities: to the extent that the conversation is constitutive of their own identities, they may “find the prospect of stopping the conversation unacceptable.” (Kymlicka 1998, 177)

Of course, I would be amiss if I noted problems with uncritical acceptance of the state as the context for intercultural dialogue, but did not note similar problems with the idea of a historical conversation. As with any relation where power is unevenly shared, conversations between majorities and minorities may be unjust. We must be concerned, for sure, that such conversations do not embody what Carens has called in discussing the situation of African Americans “relations of domination and subordination.” (98) This strikes me as another problem that might be addressed, at least in part, by processes of international adjudication. We must also

recognize that the willingness to continue a just conversation must be mutual and such mutuality should not be assumed. I think a concern along these lines has animated much of the critical response to Alan Cairns's *Citizens Plus* which argues for a constitutional vision of Canada that emphasizes the common citizenship of aboriginal and non-aboriginal Canadians: many of the critics, I believe, resent the assumption that they desire to continue to the conversation.

In sum, the vision which would base social unity on the constitutive role of historical conversations within the bounds of particular states seems more promising than the vision of creating it through intercultural dialogue (although, to reiterate, I don't see these as mutually exclusive alternatives). Among its main advantages are its ability to make sense of the general unwillingness to tamper with the borders of existing states and to suggest a motivation for both majorities and minorities to make the compromises that may be required to keep the conversation going. Of course, just as with intercultural dialogue, the very presence of majorities and minorities suggests that we must be ever vigilant that the conversation reflects legitimate concerns about justice and not simply differences in power.

IV. Concluding Observations

I will conclude this discussion with three observations. First, while there can be no doubt that the Canadian case has exerted considerable influence on all of these theorists' thinking, any assessment of this influence must be mixed. On the one hand, the diversity inherent in the Canadian reality has led to innovative thinking that has led to significant advances in the attempt to reconcile ethnocultural diversity with theories of liberal-democratic rights. As Carens has observed, "Rawls could not have been a Canadian." (5) On the other hand, concern for the Canadian case also seems to have imposed certain intellectual blinders that we would do well to remove. These include a general unwillingness to subject existing states and their borders to

moral analysis as well as the endorsement of policies, like cultural rights for ethnic and immigrant minorities, which, though reflective of Canadian reality, do not fit well with some of the theorists' underlying assumptions.

The second observation is that despite the high level of consensus that has been observed on general matters of policy, many issues remain to be resolved. These include: justification for the state and its borders; how to define membership in cultural groups; how (and whether) to integrate indigenous and other non-modern cultures; the basis of social unity; the status and role of the state and international institutions; and, the meaning and significance of modernity. Third, and finally, I have tried to demonstrate that resolution of many of these issues will require a re-examination of underlying assumptions.

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