RIGHT WITHOUT MIGHT: LIBERAL MINORITY POLITICS

by

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Can liberals justify minority rights and yet retain their traditional commitment to human rights and to individual rights? In the Introduction to his book, Will Kymlicka sketches the development of the Western political tradition in relation to cultural minorities from the beginnings of recorded history to the present day. Of particular importance has been the assumption that the homogeneous city-states of Ancient Greece provide the ideal standard of a political community. To promote that ideal, governments have adopted a range of oppressive and protective strategies, from mass expulsion through coercive assimilation to benign neglect. After World War II, Kymlicka notes, many liberals hoped that the failure of treaties to protect cultural minorities could be remedied by a new emphasis on human rights. Basic civil and political rights, such as freedom of speech, would be attributed to individuals regardless of their group membership; and because these universal rights are enjoyed in community with others, they would also afford protection for group life. There would thus be no further need for separately identified group, or minority, rights.

Kymlicka diagnoses the failure of this strategy in two crucial paragraphs of *Multicultural Citizenship* (at 4-5). His argument is that traditional human rights doctrines do not give the wrong answer to questions such as whether the traditional homelands of indigenous

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people should be protected from encroachment by resource developers, or to what extent immigrants and refugees should be required to assimilate to the culture of their new state. His argument is, rather, the far stronger one that theories of universal human rights give no answer at all to such questions:

[T]he right to freedom of speech does not tell us what an appropriate language policy is; the right to vote does not tell us how political boundaries should be drawn ... These questions have been left to the usual process of majoritarian decision-making within each state. The result ... has been to render cultural minorities vulnerable to significant injustice at the hands of the majority, and to exacerbate cultural conflict (at 5).

The remedy, Kymlicka proposes, is to supplement the human rights of the liberal tradition with explicitly assigned minority rights:

a comprehensive theory of justice in a multicultural state will include both universal rights, assigned to individuals regardless of group membership, and certain group-differentiated rights or "special status" for minority cultures (at 6).

Crucial to this argument is Kymlicka's defence, in chapter 5, of a view of liberalism grounded in a commitment to freedom of choice and a certain form of personal autonomy. He maintains that this vision is not only consistent with but in fact actually requires a concern with cultural membership. That is because the existence of a societal culture, defined by language and history, is a condition of individual choice; furthermore, since most people identify very strongly with their own culture, such identification needs to be acknowledged if individual choice is realistically to be given expression. In the following chapters, Kymlicka distinguishes between different types of minority rights, discusses practical and theoretical problems with proposals to guarantee seats in any central legislature, reviews the problem of how liberals should respond to minorities which restrict the basic civil and liberal rights of their own members, and addresses liberals' concern that group-differentiated rights for minority cultures undermine the development of the shared identity necessary for social stability. Kymlicka concludes with an overview of the future of multicultural citizenship, duly noting both the widespread — but mistaken — expectation that parochial allegiances would fade with economic and political globalisation and what is the obverse of such an expectation, namely the need for majorities properly to come to terms with the challenge of multiculturalism.

These themes also feature in Kymlicka's Introduction to his edited
collection. The volume brings together seventeen articles grouped together under six headings: Historical Background (Vernon van Dyke, Ephraim Nimni); Cultural Membership (Avishai Margaliet and Joseph Raz, Jeremy Waldron); Forms of Cultural Pluralism (Nathan Glazer, Michael Walzer, Iris Marion Young); Individual Rights and Group Rights (Darlene M. Johnstone, Michael Hartney, Chandran Kukathas, Leslie Green); Minority Cultures and Democratic Theory (Arend Lijphart, Anne Phillips); and Controversies (Bhikku Parelda, S. James Anaya, Joseph H. Carens, Allen Buchanan). These articles have all been published before and have been selected on the basis that they represent key contributions to debates on multiculturalism over the last twenty years. Although they bring nothing new to the debates, then, it is nonetheless useful to have this diffuse and authoritative literature brought together in one volume. Furthermore, the collection can be seen as a companion volume to Kymlicka's book, providing as it does the materials which have occasioned his latest work on multiculturalism and prompting the question of the success of Kymlicka's project.

To his fellow liberals, Kymlicka's book will be received as a tour de force. It is certainly a model of theoretical clarification. Consider, for example, the way in which a critical distinction is invoked to introduce Kymlicka's main substantive arguments about the justification of minority rights. A distinction is first drawn between three types of minority rights:

• self-government rights (the delegation of powers to national minorities, often through some form of federalism);

• polyethnic rights (financial support and legal protection for certain practices associated with particular ethnic or religious groups); and

• special representation rights (guaranteed seats for ethnic or national groups within the central institutions of the larger state) (at 6-7).

Kymlicka then notes that these three types are often brought together under the general heading of "collective rights" and are to an extent in consequence seen as being in conflict with individual rights. But this, he proposes, is mistaken, and once the mistake is remedied, there is no conflict. He argues, then, that there are two types of collective right. The first refers to the right of a group to restrict the individual liberty of
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its own members, invoking the cause of group solidarity or cultural purity. But there are also collective rights which refer to the right of a group to restrict the economic or political power which the larger society exercises over the group, to protect from majority decisions the resources and institutions on which the minority depends. Kymlicka argues that, whilst the first type may well conflict with individual liberty, the second type need not. On the contrary, he suggests, echoing some of Mill's concerns in On Liberty, a distinctively liberal theory of minority rights comprises recognition of the need for some external protections for ethnic groups and national minorities.

With this conceptual apparatus in place, Kymlicka honestly reviews a wide range of problems, theoretical and practical, which a liberal theory of minority rights encounters, acknowledging that some of them are intractable, even when the disputes are characterised by a sense of fairness and tolerance (at 1). To repeat, Kymlicka's fellow liberals will receive his book as a tour de force, a work of intellectual and political integrity which offers a fruitful way forward for a liberalism which has perhaps become too closely associated of late with what may be seen as the illiberal policies of the libertarians.

For a range of non-liberal but progressive theoreticians, however, Kymlicka's work will be something of a disappointment. They will be broadly sympathetic to Kymlicka's claim that the Western political tradition has been surprisingly silent on the question of minority rights (at 2), and they might well add that the silence is in no small measure due to the political stranglehold which liberalism itself has had over the terms of public debate. Crucial to that stranglehold has been liberalism's resistance to challenges which have been made to the adequacy of rights discourse for progressive politics. Kymlicka himself dismisses these critiques in just one paragraph:

Various critics of liberalism — including some Marxists, communitarians, and feminists — have argued that the liberal focus on individual rights reflects an atomistic, materialistic, instrumental, or conflictual view of human relationships. I believe that this criticism is profoundly mistaken, and that individual rights can be and typically are used to sustain a wide range of social relationships. Indeed, the most basic liberal right — freedom of conscience — is primarily valuable for the protection it gives to intrinsically social (and non-instrumental) activities (at 26).

Kymlicka is of course right to attribute that position to some Marxists, communitarians and feminists, but he omits any reference at all to the far more extensive critique of rights which has been developed
by such writers. Briefly, their argument draws attention to the ways in which rights discourse, whether pitched at the level of individual, collective or human rights, has simply failed to deliver the political benefits to which the rights claims refer. For example, despite the existence, at a formal level, of equal rights, and despite the widely accepted rhetoric of equality, women have still not been accorded parity with men in terms of economic expectations and public status. The argument here is not only that rights discourse encourages an adversarial construction of the distribution of social benefits, but, more importantly, that rights discourse — precisely because it is typically a critique of prevailing economic and political conditions — is permanently at one remove from the actual mechanisms of political decision-making.

Ironically, this critique of rights discourse is most clearly expressed in precisely the terms which Kymlicka himself adopts for his analysis of the failure of traditional doctrines of human rights to answer questions relating to cultural minorities. As noted above, Kymlicka observes that those doctrines do not so much give the wrong answers as no answers at all. And that is exactly the critique which feminists and other progressive writers have made of all rights claims. It follows from that critique that minority rights claims can be no exception. Even cursory inspection of the three types of minority rights which Kymlicka identifies will show that, for example, the polyethnic right of financial support and legal protection for certain practices associated with particular ethnic or religious groups does not, and cannot, specify the level of financial support nor the sanctions attached to non-observance of legislation. Similarly, the right of a minority group to secede does not, and cannot, specify when that minority would be justified in claiming such a right, that is, the point at which its culture is imperilled to the point of destruction. If this broader and more substantial critique of the liberal approach is correct, then it is simply a matter of logic to extend Kymlicka’s disillusion with traditional rights doctrines to his own doctrine of minority rights.