

## **Liberal Pluralism: Does the West Have Any to Export?**

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*In this article, the author questions whether Will Kymlicka's idea of liberal pluralism accurately characterizes minority policy in the West. Because of his reliance on a static principle of justice, it is argued, Kymlicka's categorizations and some of his policy solutions, particularly autonomy, are too rigid. Instead, the author suggests that we can better achieve the goals of protecting minority identity through a more dynamic model that takes into consideration individual rights, changing notions of fairness, and legitimate political interests.*

In the beginning of Will Kymlicka's *Can Liberal Pluralism Be Exported?*, he explains that the book was prompted by the desire of post-communist "reformers to understand the *political theory* of Western democracy" (Kymlicka and Opalski 2001: 13 emphasis in the original) and to help elucidate whether this theory can be adapted in adopted in post-communist Europe. I remain unconvinced by his characterization of Western theory, however, and as a result I seriously question some of his conclusions about the East. Part of this disagreement is rooted in different approaches to liberal democratic states. In addition, I believe it is far more problematic to implement his theories than he indicates. Finally, a closer examination of his remarks on immigrant communities indicates both some inconsistencies in his arguments as well as some ways to modify his principles.

My primary divergence from Kymlicka is that he obviously believes we live in the world of Rawls. The entire discussion of justice is surprisingly absent from his piece in the *Journal on Ethnopolitics and Minority Issues in Europe* (Kymlicka 2002), but is still important for understanding his rationale. It is only in his first book, the impressive *Liberalism, Community, and Culture* (1989), that the philosophical roots of his ideas are really clear. Trying to rescue liberalism from the critique of communitarians, Kymlicka lays out why and how ideas of community are integral to liberalism. The core of his argument is that cultural membership in a community is a primary good because of how it is tied to self-respect and the exercise of liberty. His subsequent writings build on these ideas and are infused with normative notions of justice, often implicitly or explicitly relying on Rawl's veil of ignorance and the difference principle. As a result, there is often a hint of guardianship in his writings (i.e. pronouncements of what justice requires). What it is often missing are the issues of individual calculations, interest aggregation, multiplicity of goals, and the messiness of the democratic process. In other words, it is not clearly informed by such strong liberal democrats as Dahl, who argues for the importance of procedural justice over notions of substantive justice (1989).

An obvious example is Kymlicka's discussion of territorial autonomy in Western democracies. He repeatedly mentions the embrace of 'principles' of territorial autonomy in the West and the 'trend' towards territorial autonomy. However, I am left wondering what 'trend' rooted in principles of justice he is talking about. Perhaps it is true with regards to indigenous populations in Canada, but I can think of no example in post-World War II Europe. To say that the federalization of Spain was popularly perceived as an issue of justice or was supported by politicians on these grounds is highly questionable. Restoration of autonomy for the Basque Region and Catalonia had some public resonance because of the desire to recreate the liberal period associated with the Second Republic. More importantly, everyone recognized that without autonomy, Catalans would vote against the referendum on the new Constitution and it was unlikely to pass without their votes (many Basques still boycotted the referendum). And, while there are many reasons to agree with Kymlicka's conclusions of the success of autonomy, the fact that violence by Basque separatists continues indicates that the principles of justice remain in dispute. Similarly, the regionalization of France and the recent decentralization of Britain were clearly reactions by centre-left parties that, after long-term control over the central government by centre-right parties, hoped to create regional strongholds as a defensive position against future centre-right national governments. Across Europe autonomy came out of specific historical and political contexts, and it is far easier to discuss the political calculations and the desire to quell bombing campaigns that went into autonomy decisions than it is to point to a clear acceptance of principles of justice for minorities.

It is this difference between Rawls and Dahl that also underlies Kymlicka's being perplexed over the failure of Recommendation 1201 and the subsequent adoption of the Framework Convention on National Minorities. Recommendation 1201, which was adopted by the Council of Europe's Parliamentary Assembly in 1993, was intended to serve as an additional protocol to the European Convention on Human Rights; if the protocol had been adopted, individuals would have been allowed to bring suit against states in the European Court for Human Rights for violation of the protocol. The Recommendation itself is a very strong statement on minority rights, which is why it was controversial from the beginning. However, Article 11, which states that minorities should have appropriate autonomy, is what finally sunk the document. Before work on Recommendation 1201 was finally abandoned, the European Commission for Democracy through Law (also known as the Venice Commission) prepared an interpretation of Article 11. The Commission's response stressed that, like other minority rights (such as language rights), any rights regarding autonomy could be granted to individuals in association with other individuals. The commission concluded that the article therefore could only be interpreted as encouraging states to "enable persons belonging to a minority to participate effectively in decision-making concerning the

regions in which they live or in matters affecting them” (1996). In this way, minorities can be seen as stakeholders just like people living near a proposed incineration plant.

The subsequent Council of Europe’s 1995 Framework Convention for the Protection of National Minorities, which Kymlicka criticizes as “weak” (Kymlicka and Opalski 2001: 373), does grant rights to “persons belonging to national minorities” and calls on states to facilitate the enjoyment of these rights (Framework Convention 1995). The Convention mandates that governments support minority language, education, and culture, thereby limiting the power of majorities to assimilate minorities and helping minorities maintain their communities. A careful reading of the document, however, makes clear that there are still no claimable rights against the state by any group or individual. In other words, everyone has an individual right to practice their culture and the state has an obligation to promote minorities’ cultures, but the government does not have to provide any specific benefit to any specific person. In this way, minority language, education, and culture have shifted from a question of rights to a matter of providing public goods (like providing clean drinking water), and it is therefore unsurprising that the document reads like a list of good state practices. By delinking the provision of public goods from a specific right to enjoy the public good, it also makes the critical question of who is and who is not a member of which community less relevant and provides more power to the individual to decide whether or not to partake in the cultural goods. Finally, the Convention’s Preface makes clear that the rationale for these rights is not a concern with justice, but the recognition that all Europeans benefit from the diversity of the continent’s heritage and that minorities can generate security concerns, two ideas that Kymlicka specifically derides. The Framework Convention as well as most other European minority agreements of the 1990s clearly places the interpretation and implementation of policy firmly within the political process in a way that approaching minority policy primarily from a perspective of justice would not.

This is not to say that issues of justice are totally devoid from politics. I believe voters and politicians do take into consideration questions of fairness and are concerned about policies that disproportionately harm the least well off. This is clearly one reason why the European documents have progressed as far as they have. And I agree that the importance of considerations of justice is often underappreciated in the East, where democracy is often characterized as strong majoritarianism. But I also believe that there are legitimate disagreements over which specific policies towards minorities are just. For this reason, the recent European documents on minority policy, which recognize minority demands as legitimate interests and try to maximize individual autonomy, are not a misleading guide at all, but accurately reflect the combination of power politics and disagreements over justice that characterize Western policy.

However, it not merely that I think Kymlicka is trying to transform a normative claim into an empirical claim that does not exist, I also disagree with his core argument about why certain cultural communities are deserving of protection. If his central argument is that our societal culture determines the arena for the exercise of liberty, it is not clear why it follows that specific cultures must be preserved. Those who assimilate are still members of a societal culture. Kymlicka's answer seems to be that "some groups have nonetheless vehemently rejected the idea that they should view their life-chances as tied up with societal institutions conducted in the majority's language." (Kymlicka and Opalski 2001: 19). Some today reject the idea that their life-chances are tied up with mastering rapidly changing technology. Communists reject the idea that their life-chances are tied up with capitalism. In fact, it may take less time to change one's language repertoire than economic class. Kymlicka tantalizingly poses the question of whether "in an ideally just liberal society, people who wanted to work in uneconomic coal mines" should receive public support to do so, but then he never answers the question (Kymlicka 1989:201). Communists, trade unionists, luddites, and even environmentalists have resorted to violence over the past century, so it is not just nationalists who hold dear their vision of the good society. While cultural membership may be a primary good, and in fact is completely inseparable from being part of a community, it seems a stretch to say the membership in certain types of communities constitutes a primary good.

His own discussions of thin societal cultures only reinforce this perception. If one were to accept the argument that one needs cultural membership in order to access and assess competing notions of the good, it would seem to follow that assimilation into majority cultures would provide for greater exercise of liberty. Actually, perhaps everyone should just learn English. I cannot imagine there is not far more about different ways of life in English than there is in Inuit, for example. Furthermore, he writes about how radically societal cultures change over time and how pluralistic societal cultures are. If they are rapidly changing, then we are not protecting the society culture that provides the arena for our liberty. For example, the societal culture that valued the conservative Catholic Francophone farmer in Quebec is largely gone. What we are really protecting is language. But do people honestly believe the Irish have less liberty today because fewer people speak Gaelic as their mother-tongue than did in 1920? Furthermore, it seems to be a specious argument that a gay Francophone in Montreal and a gay Anglophone in Ottawa who devote themselves to Canadian organizations for gay parents are not part of the same societal culture but the gay in Montreal and a childless conservative Catholic Francophone farmer in rural Quebec unquestionably are.

This leads into a criticism of autonomy, one of Kymlicka's oft proposed solutions. While he claims that it is just one tool, from his writings it is clear that it is his preferred one. It begs the question, however, of autonomy for what purpose? Since his view of cultural communities are

bounded primarily by language, one would assume autonomy is necessary for issues of language, education, and culture and not because Hungarians and Romanians in Targu Mures have specific, deep-seated communal views on street cleaning. Looking at the record in East Central Europe, from my perspective, current policies are working relatively well without autonomy. All states in the region with the exception of the Czech Republic have a constitutionally guaranteed right for citizens to develop their national and ethnic identity, and four states require the government to promote minority identity. The Slovak 'Alternative education' policy of the mid-1990s, which the Hungarians called an attempt at cultural genocide, was modelled on the Basque system. Basque children today actually may learn more Castilian than Hungarian children in Transylvania learn Romanian. The big fight in Bulgaria has been over whether the Pomaks, Bulgarian-speaking Muslims, have the right to learn Turkish, a language they have never spoken, while the Bulgarian Jews were given the right to learn Hebrew (again, a language they traditionally have not spoken). The number of children in Albanian-language secondary schools in Macedonia has gone from about 2,000 to well over 10,000 in the past decade and the number continues to grow rapidly. University education in Albanian began in October 2001 at the new university in Tetovo, and minority-language university education already exists in Romania. Macedonia, Slovakia, and Romania guarantee minorities the right to use their language in any area in which the minority constitutes more than 20 per cent of the population. Primary and secondary education is even more widespread. Almost all have special minority advisory councils to consult with parliament and minority representation is guaranteed or facilitated by special laws in Slovenia, Croatia, Poland, Lithuania, and Romania. The creation of widespread opportunities in the regions to maintain minority culture would seem to indicate acceptance that minority identity is here to stay.

Under an autonomy arrangement, it is likely that minority language, education, and culture would be restricted to a smaller territorial area that it is now. Despite Kymlicka's protest that this does not have to be the case, he also mentions that territorialization of minority rights is becoming the norm in some states in the West (Kymlicka and Opalski 2001: 365), and there is no reason to suspect this would not also be true if autonomy were adopted in the East. His real complaint about non-territorial autonomy is that over time many individual members of minority groups choose to assimilate when they live outside autonomous regions. In other words, people are selecting a vision of the good that Kymlicka believes they should not be making and would not be making if the incentives were different. Therefore, the solution is to create incentives for them to maintain minority identities. While Kymlicka recognizes that the neutral state is a myth, he fails to explicitly acknowledge that all policies towards minorities change the calculations that individuals make regarding the good. For example, Hungary and Slovenia have enacted education policies that have

resulted in the explosion of ‘German’ and ‘Italian’ children respectively. Romania’s electoral law has caused the mushrooming of small minorities that people thought had virtually disappeared. Autonomy may very well, in the words of Laitin (1998), discourage people from ‘tipping out’ of the minority community in a way that other policies do not, but it is still not clear to me that the question of territorial autonomy involves an inherent issue of justice.

Autonomy may be a promising solution for reducing ethnic violence and high-levels of mobilization, though. Kymlicka cites Gurr’s conclusion that loss of historic autonomy is strongly correlated with the outbreak of violence (2000). If we accept that restoration of autonomy for minorities is good public policy, there is still a real paucity of cases in the East. Except for Kosovo and Vojvodina, there is not a single case of lost autonomy in Central Europe. The only other one Kymlicka mentions is the Hungarian Autonomy Region in Romania, which existed for about 15 years, had its borders redrawn during this period, did not include significant Hungarian areas, and actually had no autonomy but was merely an administrative region like the other regions in Romania at the time. Furthermore, in the West autonomy has worked well when minorities are regionally concentrated in a territory with historic boundaries (usually a former independent state) or a discrete territory that was transferred from one state to another and had a majority minority with respect to the new state (islands and South Tyrol would fall here). There are no such cases in Eastern Europe.

For minorities across Eastern Europe, including the Hungarians in Romania and Slovakia, the Russians in Latvia and Estonia, the Turks in Bulgaria, Serbs in Croatia, and the Albanians in Macedonia, new borders would have to be drawn. This is where Bosnia becomes instructive. The problem in March 1992 was not that the central government refused any consideration of autonomy; it was that Croats, Serbs, and the Bosnian Muslims could not agree on how to draw boundaries (Burg and Shoup 1999). This is not likely to be an easy feat in these other cases. While Kymlicka seems unconcerned about the problem of drawing boundaries, it is a particular problem as few of these minorities are territorially concentrated. If the rule of thumb were boundaries that created a territory that included 50 per cent of the minority population and was majority minority, it could probably be done in Macedonia, Slovakia and now in Bosnia, but not in Romania or Bulgaria. For the Russians in Estonia and Latvia, who are largely urban, creating an autonomous region would be more akin to creating an autonomous region for African-Americans in the United States. One could do it, and many African-Americans may come to support it, but that does not mean that it really makes sense to do it. This demographic reality is another reason why alternatives to the territorialization of minority policy are particularly attractive for Eastern Europe. Finally, Kymlicka interprets this trend to non-territorial minority policy as an indication that there has not

been enough discussion of territorial autonomy, as if everyone would adopt it if only it were discussed enough. Others, however, are sick of the topic as they believe it has been discussed so much and believe there are better solutions to be explored.

Even Kymlicka acknowledges that autonomy and other liberal pluralist policies will not be a panacea for all issues surrounding cultural minorities. He mentions the oft-resulting creation of parallel societies and the highly politicized nature of ethnic groups. However, in his own writings he provides no vision of relations between communal groups. Is there any reason why Quebec or South Tyrol or the Russians in Riga should not be granted independence? One of the major controversies regarding Hungarian education in Romania and Slovakia was not whether Hungarians should be able to learn Hungarian, but whether or not they must become fluent in the language of the majority. This question of the responsibilities of citizenship and the related issue of state power over minority cultural communities means that the liberal core of Kymlicka's theory often gets muddied by those who only see its communitarian bent. One of my favourite examples of misinterpretation was at a conference outside Sarajevo. A Serb pollster from Banja Luka argued that Kymlicka would naturally support the restriction on Muslims from returning to Republika Srpska because Serbs almost universally agreed that it was an important measure to protect their cultural community. I doubt an argument that the Muslims could learn to speak Serbian instead of Bosnian would have changed his view.

This brings me to my final concern with Kymlicka's theory. If we agree with his theory that ethnic and national cultural communities are primary goods, there is no route in his theory to justify limits on state subsidization and autonomy to any group. For example, in the Romanian parliament there are now parties representing twenty different minorities. Should the Italians, Greeks, and Hutuls of Romania receive territorial autonomy, state universities, and other means of state-building? If not, why not? And how is such a decision to be made? The lack of clarity on this point brings to the fore his odd position on immigrants. If our cultural community, as defined by language and societal institutions, are so important to us, why do immigrant communities not have the same rights as ethnic and national groups? If the answer is because they moved, then we have to acknowledge that people's vision of the good is not tied to their cultural community; people can change their language repertoire, and people can exercise liberty in whatever cultural community they find themselves. Kymlicka contends that there is a difference between voluntary and involuntary incorporation into the state. In what sense did I voluntarily incorporate myself into the community of the United States? This approach only makes sense if we believe membership in cultural communities is determined by birth, which would seem to undercut the liberalism of his liberal pluralism. Furthermore, when arguing for the right of immigrants to become members of the



majority community, he writes “the original terms of admission become irrelevant” (Kymlicka and Opalski 2001: 42). Why is this not true, then, for ethnic and national minorities? Finally, Kymlicka writes that members of the receiving community are expected to modify their own culture in order to facilitate the incorporation of immigrants, even if they arrive illegally (Kymlicka and Opalski 2001: 41-42). This would seem to undermine the ability of communities to protect their vision of the good, which is what I thought autonomy was all about. Why does this spirit of compromise and understanding not apply to the creation of a common cultural community for all citizens of a state?

The really perplexing part of his theory is that the Quebecois are deemed to be a national community and not an immigrant group. It seems to rest on the argument that if immigrant communities maintain their language and their societal institutions (religious institutions, social clubs, etc.), then they can become national communities. Kymlicka seems to assume that they will not because they migrate for a better life and this necessitates assimilation, but in fact it does not. Throughout the nineteenth century many immigrated to the United States with the hopes for a better life and with every intention of maintaining their cultural community. Even today it is not hard to imagine a family living in an entirely Spanish-speaking area of Los Angeles feeling as if their life is better than it was in a rural area of Central America and that their children’s lives will be better in L.A. even if they never learn a word of English. Increasingly in Europe, states are assuming that immigrants want to escape violence and extreme poverty and at the same time maintain their cultural communities. Denmark and the Netherlands both have generous education and language rights for immigrants. Even in Leipzig, Germany, if the parents of eight children want their ‘mother-tongue’ taught to their children, the public schools must provide a teacher. Vietnamese, Kurdish, and several other immigrant languages are now taught in the schools. Berlin schools now teach Islam and even France just created an Islamic Council to advise the government on policies that impact Muslim communities. In other words, states are implementing policies towards immigrants that look like policies towards national and ethnic minorities.

It is not clear to me how Kymlicka would respond to these changes in policies towards immigrants, but it leads me to consider the static and reified nature of his categories. While there is value in considering the requirements of justice towards different types of groups, it seems equally clear that we need to remember that who falls into what group and popular considerations of justice are contested. This is why I find Pettai’s discussion of Baltic Russian-speakers more satisfying than Kymlicka’s (Kymlicka and Opalski 2001: 259-69). Instead of trying to fit hard cases into a predefined box, Pettai argues that how groups are perceived can and does change. As change is impacted by the resources and resonance of legitimacy arguments, we are back to the world of Dahl. But new policies arise not merely because of changes in how to categorize groups, but also

because notions of what justice requires evolves. Kymlicka sums up the major trends in the West over the past century by noting that more national minorities have autonomy. This leaves out the fact that women were given the right to vote, American schools were desegregated, and Europeans have begun to give gays and lesbians the right to marry and adopt. It is only by ignoring these broader changes regarding public policies towards identity groups that Kymlicka boxes himself into strict categories and calls for autonomy. In contrast to attempts at clear categorization by Kymlicka, Gurr argues that discrimination is the most likely root of ethnic violence, but he notes that what constitutes discrimination is contextual (2000).

Kymlicka's writings are valuable for how they force us to consider issues of justice and how he has exploded the nonsensical, post-World War II myth of the culturally neutral state. However, in trying to move his ideas to public policies in the East, his ideas almost seem too narrow. We should not automatically privilege ethnic and national communities over all other types of communities that generate meaning. If the Framework Convention does not cover what minorities "feel entitled to" (Kymlicka and Opalski: 373), I think it is legitimate to work to change their expectations and remind them of their responsibilities as members of a democratic state. This was the failure of Bosnia, and across the new post-communist democracies, promoting a culture of group entitlement strikes me as particularly dangerous, especially in light of Gurr's conclusions. It is this reality that has prompted the High Commissioner on National Minorities to try to quell both the demands of minorities and the excessive majoritarianism that characterized some policies towards minorities. Minorities need to recognize that while public policies are never neutral; this is true across all policy areas. Organized interests compete for a place on the agenda, for resources, and for policies that reflect their vision of the good society. Politics is messy, involves trade-offs, and sometimes groups lose out. The norm we should be exporting is not preconceived notions of what minorities should want or what our vision of substantive justice requires, but this understanding that democracy works best when everyone recognizes that there are competing interests, everyone considers issues of fairness and reconsiders their notions of fairness, and everyone stays within the liberal rules of the game.

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## Biographical Note

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