

Rethinking Restrictions

A Liberal Approach to Minority Rights and Aboriginal Education

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## Abstract

Whether Aboriginal people should have special educational rights is a question that has simmered and occasionally boiled over during the past four decades. This dispute remains largely unresolved due to perceived tensions that exist between liberal values and minority rights. Will Kymlicka attempts to resolve this conflict by claiming that the liberal concept of autonomy can be used as a starting point for minority rights. However, there are several questions that are inadequately answered in his theory. Namely, why is autonomy so important? What is the significance of a *particular* culture? Should a liberal society support cultures that are illiberal? In response to these questions I will demonstrate that the liberal concept of autonomy requires that adequately restrictive cultures be protected. From this it is possible to develop a cohesive theory of minority rights that can be used to defend Aboriginal control of formal education.

La question à savoir si les autochtones devraient avoir des droits éducationnels spéciaux mijote depuis quatre décennies tout en ayant parfois atteint un point d'ébullition. Cette controverse demeure irrésolue principalement en raison des tensions perçues entre les valeurs libérales et les droits des minorités. Will Kymlicka tente de résoudre ce conflit en affirmant que le concept libéral de l'autonomie peut constituer un point de départ pour les droits des minorités. Cependant, plusieurs questions demeurent sans réponse dans sa théorie. Par exemple, est-ce que l'autonomie est véritablement importante? Quelle est la signification d'une culture *particulière*? Est-ce qu'une société libérale devrait soutenir des cultures non libérales? En répondant à ces questions, je vais démontrer que le concept libéral de l'autonomie nécessite que des cultures adéquatement restreinte soit protégées. Ensuite, il est possible de développer une théorie cohérente des droits des minorités qui peut être utilisée pour défendre le contrôle autochtone de l'éducation formelle.

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## Introduction

Aboriginal education in Canada is in a state of crisis. Aboriginal youth are being alienated by school structures that are hostile to their well-being. An unyielding education system has led to the current situation where 75% of Aboriginal people have not graduated from secondary school (Brunnen, 2003). The issues facing the Aboriginal educational system are daunting, yet the root of the problem has been acknowledged by Aboriginal leaders who assert that “western education is in content and structure hostile to Native people” and as “currently practiced, is cultural genocide” (Hampton, 1995, p. 35). The solution to this crisis has often been seen as Aboriginal control of their own formal educational system. Although substantial progress has been made towards such a system it remains unclear whether “devolution actually occurred, and if it did, how much power... the federal government devolved” (Agbo, 2002, p. 290).

Despite the intensity and longevity of the debate concerning Aboriginal control of education there is a lack of scholarship that examines the underlying philosophy behind the Federal Government’s policy. More research must be done that focuses solely on the Canadian Government’s reluctance to fully support Aboriginal people’s right to determine the structure of their own education system. The following thesis will explore this area and uncover one of the complex series of questions that arise in juxtaposing the liberal value of individual rights, which Canada was founded upon, with the right of minority groups to autonomous education. Ultimately, I conclude that minority rights can be justified through a liberal framework that is based on individual autonomy.

## **Methodology**

In addressing the above issue it is necessary to engage in substantial dialogue with current liberal theory, as a careful analysis of liberalism opens the possibility of forming a cohesive theory of minority rights that can bridge the divide between the actions of a predominantly liberal Federal Government and the demands of Aboriginal people. Due to the theoretical nature of this issue and the current available literature, this thesis will borrow heavily from the field of political philosophy. It must be noted that although this approach enables a productive analysis of current policy and highlights several key underlying tensions, it is also somewhat limiting, with several factors that are relevant to issues of minority rights being left out of consideration. Chief among these factors is the bias that comes with working from a Eurocentric framework that in its very structure can be hostile towards Aboriginal people. Although this thesis largely bypasses this pressing issue, there is validity in focusing on only a key piece of what is certainly a complex puzzle. As such, the goal of this thesis is not to create a comprehensive review of Aboriginal educational rights but to form a concise account of how liberalism and minority rights are not only compossible but also fundamentally interconnected. The most efficient way to achieve my objectives is to engage primarily in literature-based research that focuses on liberalism and minority rights. In order to further sharpen this discussion I will heavily rely on the work of Will Kymlicka, whose work is considered to be foundational in this area.

## **Chapter One**

Will Kymlicka's theory of minority rights is deeply embedded in the liberal

notion of autonomy. Traditionally, liberals have thought that respect for personal autonomy required the liberal state to eschew recognition of groups – after all, respect for personal autonomy requires supporting and recognizing individuals. However, Kymlicka’s insight is that individuals can only develop and use the capacity for personal autonomy within a specific social and cultural context. If the social and cultural context within which individuals live is threatened, then so is their (and their children’s) capacity for personal autonomy. So for Kymlicka, there is no necessary conflict between supporting a group’s cultural integrity and individual autonomy; in fact it is often necessary for the liberal state to support a group’s culture precisely in order to support the autonomy of individual members. This is the key, simple idea upon which Kymlicka’s theory of liberal minority rights is based. It is this insight that provides the basis for his fully developed and complex theoretical justification for minority group rights.

In chapter one, I explore one aspect of this argument in more detail. Can Kymlicka make good on the claim that personal autonomy is and must remain a core liberal value, because that capacity is essential to and inseparable from the capacity to form a conception of the good life and to live a good life? This is a controversial claim, and I argue that Kymlicka’s defense of this claim can ultimately be redeemed, although his own arguments fall somewhat short of a successful defense. As such, the main goal of my argument is to show how Kymlicka’s theory needs to be revised and buttressed to provide a convincing defense of the idea that autonomy is an essential precondition of the good life.

## **Chapter Two**

In chapter two I examine Kymlicka’s attempt to create a theory of minority rights

that is based on autonomy. Despite the nuanced reasons presented for valuing culture, Kymlicka's theory fails to justify why a *particular* culture is of more utility than simply *a* culture. In effect this leaves open the possibility of assimilating minority groups into the dominant culture rather than protecting them. Although Kymlicka's theory cannot provide convincing reasoning to oppose whole-scale transitions to another culture, it is nonetheless possible to scaffold his theory with a closer examination of how autonomy and culture interact with each other. I propose that for autonomy to be exercised a culture needs to not only create options but also limit them to a point where it is possible to gain adequate knowledge of what each option entails. Whole-scale cultural transitions are harmful to minority groups because they create too many options and too little knowledge of what those options are. Therefore, minority cultures should be protected from having to undergo whole-scale cultural transitions.

### **Chapter Three**

At this point in the thesis a basic theory of autonomy based minority rights has been formulated. However, a common objection to Kymlicka's original theory also applies to the revised model that I have presented. This objection argues that protecting the culture of potentially illiberal minority groups who do not value or promote autonomy is counter productive. If the culture of a minority group does not foster autonomy then protecting it would hinder autonomy. On the other hand since culture is important, removing protection would also be harmful to autonomy. This places autonomy liberals in a difficult position where there does not seem to be an ideal solution. In chapter three, I will once again turn to Kymlicka's response and then build upon it with a reply of my

own. My response consists of two main points, with the first being that cases of illiberalism that create a dilemma occur far less often than presumed. This is because all cultures that are conducive to autonomy must restrict the options available to their members to some degree and the threshold of being too illiberal is further to the right than initially anticipated. The second point is that in cases where gross illiberalism exists, it becomes necessary to choose the option that will create the least amount of harm to individual autonomy. In some cases this will mean continuing to protect a minority culture and in other cases it will mean requiring them to risk undergoing a whole-scale transition. This solution is consistent with the value of autonomy and is reflective of the real world in which theories are played out.

#### **Chapter Four**

In chapter four I return to the issue of Aboriginal control of Aboriginal education with the intention of displaying how the revised Kymlickian theory, which I call a theory of adequate restrictiveness, might be applied to a practical situation. Although I will consider this issue in some depth, this chapter is not meant to provide a comprehensive overview of Aboriginal education but rather lay out some of the factors that need to be considered when deciding whether or not Aboriginal people should have the right to control their own educational system. Essentially, I ask whether autonomy will be enhanced more from Aboriginal control of education or from being run by other institutions. Ultimately, I conclude that Aboriginal people should have the right to control their own educational system.

## Chapter One

### Autonomy, Liberalism and Minority Rights

Over the past several decades there has been increasing pressure from minority groups to have cultural protection recognized as a fundamental right. At the forefront of this debate in Canada, Aboriginal people have been advocating for control over various institutions that they see as crucial to the survival of their culture. Formal schooling has played a prominent role in this struggle and a transition has taken place from the Federal Government's assimilation policy of past times to the current move towards band run schools. However, the gains that Aboriginal people have made in controlling their own education system have been offset by an us-verse-them relationship between Aboriginal people and the Federal Government. This dichotomy manifests itself in the continual struggle between the two parties and has resulted in the Federal Government officially conceding band control but refusing to provide the support needed for successful implementation of the new system (Agbo, 2002, p. 289-290). In order to better understand and move forward from this conceptual deadlock it is necessary to first comprehend how the liberal philosophy that undergirds the Federal Government's policy creates a distrust of minority rights.

Many liberals regard personal autonomy as a foundational element of liberalism. As such, in liberal states such as Canada, the concept of personal autonomy has proven to be a guiding force in the creation of policies that govern minority rights. During the formulation of the White Paper in 1969 that threatened to abolish special rights for Aboriginal people, Pierre Trudeau used the following quote to summarize Canada's commitment to personal autonomy, "Man is bound neither to his language nor to his race: he is bound only to himself, because he is a free agent" (Renan as quoted in Kymlicka,

1989, p. 173). Key in this phrase is the neither/nor structure which rules out the possibility of supporting attachment to one's language and race while at the same time being a free or autonomous agent. It is this presumption, that culture and personal autonomy are diametrically opposed to each other, that fuels suspicion of minority rights.

As the most influential and sophisticated proponent of a re-envisioned liberal theory of minority cultural rights, Will Kymlicka claims that autonomy and minority rights are not only more harmonious than commonly thought but also mutually dependent on each other. Before exploring Kymlicka's proposition, it is first necessary to pause and reflect on the primary assumption of the liberal versus minority rights dilemma; that autonomy is of principle importance to liberal theory<sup>1</sup>. In the case that a convincing argument for autonomy cannot be formulated, it is possible that autonomy based liberals should shift to other foundational elements that are more easily defended.

The main purpose of this chapter will be to critically examine the theoretical justification for autonomy by closely scrutinizing Kymlicka's arguments. In particular, I ask whether Kymlicka is able to make good on the claim that autonomy is central to the good life, and therefore that a liberal conception of minority cultural rights must respect and honor the central importance of personal autonomy. This is an important question because for Kymlicka the value of personal autonomy, and its place in his theory, makes

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<sup>1</sup> Recently this view has been challenged by a number of 'diversity liberals' who claim that diversity and not autonomy should be the primary focus of liberalism. Arguments for the primacy of diversity in liberal theory can be traced to the fracturing of world views caused by the Reformation (Galston, 1995, p. 525), yet the theory has resurfaced in the contemporary work of William Galston (1995), Francis Schrag (1998) and in a slightly modified form in Chandran Kukathas's writings (1998). The claim that diversity liberals make is a strong one and deserves to be considered. However, before looking for an alternative to autonomy it makes sense to evaluate autonomy on its own terms. If autonomy proves to be an indispensable and primary aspect of liberal theory then it cannot be placed to the side and must be dealt with head on.

it essential that autonomy be justified as an integral and irreplaceable feature of *all* good lives. This is an ambitious stance to defend and ultimately I argue that Kymlicka's justification for minority cultural rights is unsatisfactory because he fails to provide convincing grounds for valuing autonomous lives over lives that are manipulated by good life experts. Nevertheless, I conclude that Kymlicka's autonomy-based defense of minority cultural rights can be strengthened and made satisfactory by a closer and more finely tuned examination of the role of deceit in constructing and achieving a good life.

### **Kymlicka's Case for Autonomy**

Kymlicka's justification of autonomy is based on the premise that "at the most general level, our aim is to lead a good life, to have those things that a good life contains" (2002, p. 214). It is important to note that Kymlicka does not claim or endorse a particular version of a good life but is making a fairly self-evident observation that people wish to lead a good life, whatever that may entail. The ambiguity of what a good life is should not be seen as a concession in Kymlicka's theory but rather as an instructive element. That what constitutes a good life cannot be easily ascertained allows Kymlicka to conclude that "leading a good life is different from leading the life we *currently believe* to be good" (1989, p. 10). This proposition can be taken further by adding that at some point in everyone's life there may be a crisis of faith; a moment when it becomes questionable as to whether our goals and projects are contributing to the good life. When these crises happen it is imperative that an individual be capable of rigorous rational reflection or in other words autonomous thinking (Kymlicka, 1989, p. 11). It is through autonomy that a person can assess their goals and projects, determine whether they are contributing to a good life, and change them accordingly.

### **The Challenge of Good Life Experts**

As so far described, Kymlicka's case for autonomy has a serious shortcoming.

The fact that we may be mistaken about the value of the projects that we engage in does not necessarily lead to the conclusion that we should have autonomy on a personal level. Rather than promoting autonomy, the crisis of faith that humans encounter might instead demonstrate that many individuals are either ill-equipped or unable to make accurate deductions concerning the good life. A crisis of faith may be caused by too broad of an application of autonomy that demands more than can reasonably be expected of an individual. Is it possible to insure that everyone possesses the expertise or knowledge, wisdom, and skill needed to make autonomous decisions that contribute to a good life? Or from a utilitarian perspective, would people be better served through the deliberations and guidance of a select few who possess above average expertise?

To help clarify the challenge that good life experts<sup>2</sup> pose to Kymlicka's theory we can consider a parallel example. In the field of medicine we acknowledge doctors as health experts. When a number of these health experts agree on certain aspects of healthy living we can place considerable weight behind these conclusions and the recommendations that stem from them. If the average person were to forfeit autonomy in favour of following these recommendations the population as a whole would certainly be healthier. Rather than allowing people to decide whether to smoke or consume alcohol excessively, it would be better from a utilitarian health perspective if people simply followed the doctor's orders. Similarly, it could be argued that individuals would be

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<sup>2</sup> I will be using the phrase 'good life expert' throughout this chapter to signify a relationship between autonomy, individuals, knowledge, and a good life. A full explanation of such a complex interaction spans several disciplines and extends well beyond the scope of this paper. It will however be adequate to consider 'good life experts' as individuals who possess an above average understanding of the preconditions that are necessary for a successful pursuit of a good life.

more successful in the pursuit of a good life if they forfeited their own autonomy in favour of following the advice of good life experts.

The argument that a society run by a select group of good life experts could lead to increased attainment of the good life can be further strengthened by the fact that many of the worthwhile projects that we engage in require commitment that is not easily obtained when autonomy is the primary value. Some meaningful interests and projects can only come into being through an arduous struggle that most would not undertake on their own accord (Callan, 1988, p. 42). For example, a parent might force their teenager to practice piano instead of allowing them to engage in a project of their choice. Playing piano might not be very rewarding for some time but it is quite likely that later in life musical aptitude will be considered a component of what this person or those who listen to the music, believe to be the good life. If Kymlicka's initial objective is to create the necessary preconditions for the good life than it would seem as though guidance from an expert might go further than personal autonomy. Therefore, the existence of good life experts might not only justify advice but also active compulsion in order to bring about the realization of the good life in individuals.

### **The Existence of Experts**

For Kymlicka's justification of autonomy on a broad scale to be successful it needs to show that all humans have equal expertise in determining what a good life is. If expertise varies then the overall pursuit of a good life would benefit through some type of guidance or leadership from those who have a better understanding of what constitutes a good life. But there remains the question of whether varying degrees of expertise does exist. To answer this we can look to Kymlicka's work as well as our lived experiences.

Kymlicka's theory indirectly supports varying degrees of expertise in two separate ways, the first is through the "recognition that some lives are better or more valuable than others" (Moore, 1993, p. 148). If there are varying degrees of value that can be attributed to different ways of life then it follows that some individuals will be more adept than others at knowing what it is that makes lives better and how to work towards these lives. After all, if we consider other things that have a tangible 'better' there are always varying degrees of understanding as to why the object in question is superior. People may agree that a more fuel-efficient car that is equal in all other respects is better but it is the mechanics and engineers who actually understand why and how it is more fuel-efficient and therefore have the ability to continue to reproduce the feature that is superior. Similarly, if some lives are better than others, then there will be varying degrees of understanding of why and how these lives are of more value.

The second support for the existence of experts that can be found in Kymlicka's theory stems from Kymlicka's dependence on the conception of himself as an expert; if Kymlicka is not an expert on the good life then there is no reason to follow his advice or place any weight on his conclusions. As Eamonn Callan convincingly points out, if there is a lack of experts then *who* is to say that autonomy for everyone increases our chance of a good life? If there is no expertise then "the encouragement of autonomy is just as arbitrary as the fostering of mindless obedience" (Callan, 1988, p. 42). Therefore, the fact that Kymlicka is basing his theory on autonomy as a precondition or component of a good life means that he must believe that he has a more nuanced understanding of what constitutes a good life than those who might disagree with him.

Outside of Kymlicka's theoretical framework our lived experience confirms the

existence of good life experts. In the broadest sense there exists a segment of society that is respected for their knowledge concerning what a good life is and what steps are needed to pursue one. The prevalence of these experts indicates an overall acceptance of a hierarchy of good life experts and the importance of placing these people in situations where they can further develop their understanding and disseminate the results to the general populace. Our experiences on a micro level also confirm the idea that everyone does not have an equal grasp of what is needed in order to pursue the good life.

Everyone is at some point familiar with asking others for advice, yet we do not genuinely seek everyone's opinion and even when we have received several viewpoints, we weigh them differently depending on how much we respect the other person's insight into what is needed to live a good life. This unequal weighting demonstrates that we value advice based on what we believe their expertise to be in the area. Even though determining who should be considered a good life expert is often a thorny and contentious issue, the point remains that there is a varying degree of understanding concerning what the preconditions to the good life are.

At this point it has been shown that the existence of good life experts would pose a serious challenge to Kymlicka's justification of autonomy. Ample evidence has also been given from both within Kymlicka's theory and from lived experience that good life experts do exist. This places Kymlicka in a difficult position where he cannot move forward with his theory of minority rights until he develops a more convincing reason for considering autonomy as a primary liberal value. Fortunately, Kymlicka does attempt to bolster the case for autonomy by adding that autonomy is also important because it is a vehicle through which individuals can endorse the projects that they are engaged in.

### **The Need for Endorsement**

In order for Kymlicka to defend autonomy as a primary liberal value he must provide a reason for why a life that is controlled by good life experts is not desirable. He rises to this challenge by claiming that “no life goes better by being led from the outside according to values the person doesn’t endorse” (1989, p. 12). To Kymlicka, leading life from the inside is crucial to achieving any form of a good life; something can only be a worthwhile project if it is personally endorsed. For example,

Praying to God may be a valuable activity, but you have to believe that it’s a worthwhile thing to do—that it has some worthwhile point and purpose. You can coerce someone into going to church and making the right physical movements, but you won’t make someone’s life better that way (Kymlicka, 1989, p. 12).

If Kymlicka is correct, then autonomy can be justified as it is only through autonomy that a person can live their lives from the inside and wholly endorse certain projects.

On a basic level it seems self-evident that Kymlicka is correct; it is difficult to imagine that an individual can engage in a good life if on a fundamental level they oppose or half-heartedly endorse the projects that they are involved in. Yet it is not nearly as clear if real autonomy is needed in order to gain this endorsement or whether it would suffice for people to *think* that they are making autonomous choices even when they are not doing so. It is possible to imagine a society in which good life experts manipulate a population into believing that they are autonomous while they are actually following a set path. Such a society would benefit from the expertise of good life experts while at the same time managing to gain endorsement.

The combination of good life experts and manufactured personal endorsement is not a new one to liberalism. In his treatise on education, Rousseau endorsed an education for the student Emile where the tutor/expert hovered in the background creating and

molding the environment that Emile would encounter and thus largely controlling the decisions that he could possibly make. Yet at the same time Emile was supposed to feel entirely free to choose his own path. According to Rousseau, the tutor's goal is to let the pupil "always think that he is master while you really are master. There is no subjection so complete as that which preserves the form of freedom; it is thus that the will itself is taken captive" (Rousseau, 1966, p. 22). The illusion of complete freedom that the tutor masterfully creates causes Emile to personally endorse all of the projects in which he engages. Personal endorsement is what makes Emile willing to engage in projects that would otherwise have been considered to be arduous tasks using a traditional pedagogy of direct coercion.

The upshot of the possible use of manipulation as an alternate way of garnering endorsement is that individual autonomy may not be the best way to maximize a population's chance at achieving a good life. Although endorsement is a necessary precondition to a good life it is possible to endorse a project not only through individual autonomy but also by being manipulated. Furthermore, if a society were able to place good life experts in positions where they could be the manipulators, there would be substantial benefits derived from their knowledge of what is needed to pursue a good life. In the next section we will turn to Kymlicka's response to the threat posed by manipulation.

### **Kymlicka's Defense Against Manipulation**

Kymlicka dismisses the possible benefits of a society that is manipulated by good life experts over one that relies on individual autonomy by claiming that any institutional

or government effort at manipulation is bound to fail for a number of practical reasons. The four reasons that he provides are as follows; “governments may not be trustworthy; some individuals have idiosyncratic needs which are difficult for even a well-intentioned government to take into account; supporting controversial conceptions of the good may lead to civil strife” and “paternalistic restrictions on liberty often simply do not work” (1995, p. 80-81). In order to evaluate the success of Kymlicka’s counter arguments it will be necessary to spend a moment on each of the above points.

Kymlicka’s first objection is that governments might not be trustworthy. Presumably what he means by this is that governments might not be committed to upholding the interests of the general population in promoting the good life but might instead focus on less noble pursuits or at worst sacrifice the populations’ opportunities to increase their own. I think that a few distinctions are in order here. Typical governments are not necessarily composed of people who have an exceptional grasp of the good life. The people who we consider to be experts on the good life are often associated with religious, academic, and humanitarian institutions, not governments; albeit, the government does often exercise power over these communities and as such might be capable of repressing them. There would be a significant difference between a society that is managed by a typical government and one that is controlled by good life experts. Another important point is that a non-trustworthy government is not an unsolvable dilemma. The fact that many governments are currently untrustworthy does not mean that they always will be; there is a possibility that over time a progressive society would be able to bring this untrustworthiness to an acceptable level. Many governments have evolved from closed door, largely unaccountable monarchies, to more open and

responsive democracies. If this trend continues there is hope that each new change will bring about a more trustworthy government. Therefore, Kymlicka's first line of defense does not provide adequate justification for favouring individual autonomy over manipulation.

Kymlicka's next counter argument is that individual diversity within a population creates a problem for even well intentioned governments. A population may be so diverse that it would be impossible for even a government directed by good life experts to ensure that preconditions to the good life are being met. However, this argument is only successful if diversity amongst a population translates to diversity amongst the preconditions for the good life. But there is little evidence to link these two factors and it seems possible to make general statements concerning preconditions even when there is considerable diversity. Excellent examples of good life experts who are searching for general preconditions can be found in the work of many philosophers, including Kymlicka. Kymlicka attempts to illuminate what preconditions are needed in order to achieve a good life. His goal is to unveil general universal truths that often allow and sometimes even require significant diversity of individual goals. In the same way a government can support a climate that is conducive to the good life and can guide the population in a way that is beneficial to most people. It is therefore possible for a government that values the opinions of good life experts to ensure that basic, universal preconditions are being met.

Kymlicka's third argument against a society controlled by good life experts is that a government that promotes a certain conception of the good life will lead to civil strife. The concept of civil strife being created by a government is contingent on a number of

complex facets interacting with each other. Civil strife is most certainly not caused exclusively or even primarily by a government promoting a correct version of the good life. Any examples of civil strife that Kymlicka might utilize could be explained through other factors such as a lack of resources, a bad governmental system, or a misguided pursuit of the good life. As such, it is impossible to point out an example where it was exclusively the fault of a correct version of the good life that led to strife. Secondly, even if it could be shown that promotion of a certain version of the good life was a contributing factor to civil strife the example might point more to how the government attempted to enforce its beliefs and less to the actual stance that it took; if a government is successful at manipulation and ensures that the citizens personally endorse the concepts being forwarded, then this personal endorsement would preclude the chance of controversy.

Kymlicka's final objection against a society managed by good life experts is articulated through the bold statement that parental restrictions simply do not work. The claim that parental restrictions on liberty are never successful is a highly contentious position to take. I presume that what he intends by his statement is that history is rife with examples of tyrannical dictatorships that have failed to sway a population to adopt a particular version of the good life by restricting liberties. But history is also full of successful coercive actions that have resulted in people endorsing a certain conception of the good life. Brian Barry points out "the effectiveness of coercion in producing genuine belief over the course of a few generations is beyond question: many of the contemporary adherents of Islam, and many Catholics and Protestants in Europe, are descended from people who originally adopted it at the point of a sword" (1990, p. 5). Thus, there is

ample evidence that even forms of coercion that use force have been historically successful in eventually gaining personal endorsement.

In summary, though Kymlicka demonstrates the need for personal endorsement in the good life, he fails to explain why this endorsement cannot be garnered through manipulation rather than true autonomy. The arguments that Kymlicka provides against manipulation by good life experts fail to be definitive, though several of them raise important points to reflect on in the formation of a government structure where good life experts play a pivotal role. Despite these considerations, it would seem that an optimal society for achieving the good life is one in which good life experts carefully manipulate individuals into endorsing projects.

### **An Alternative Case Against Manipulation**

Manipulation carried out by a select number of good life experts has so far been shown to be a viable alternative to a system where individuals possess true autonomy. As such, Kymlicka has failed to show why autonomy-based minority rights, and hence autonomy-based educational rights for minority groups, are justified on the basis of their conduciveness to an individuals' ability to achieve a good life. Furthermore, there are no additional factors within Kymlicka's theory that can be seen as objections to manipulation and the possibility of making a case for personal autonomy as a primary feature of liberalism is beginning to fade. However, I believe that there remains a philosophical avenue that remains unexplored by Kymlicka. I will argue that manipulation is unacceptable because the meaning of our lives is deeply bound to the notion of truth<sup>3</sup>. Being manipulated by a select portion of society entails a life that is

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<sup>3</sup> I am now treading dangerously on metaphysical grounds that have captivated the

based on intentional falsities and deceit and this undermines the value that we place on living a life that is based on truth.

Within the given context we can define manipulation as devious management of a situation to bring about a specific end. The project of manipulation, whether it is a parent to child or government to people, not only uses deceit as a tool but relies on the efficiency of deception and the ignorance of another to bring about a certain state of affairs. One of the hallmarks of manipulation is that it bypasses, and seem to require bypassing, the rational capacities of the manipulated. As such, even if I am manipulated into doing something that is good for me, I cannot know why it is good for me to do that thing. Manipulation requires that I be deceived into doing it without understanding why I should do it; and indeed it requires me to base my doing it on reasons other than those that are rationally linked to the activity in question.

For example, it may be good for me to learn to play the piano because doing so will help me to fulfill and perfect certain talents that I have, and may bring a great deal of long-term satisfaction to me. But it is not compatible with manipulation for an educator to motivate me to learn to play the piano for these reasons. In this situation manipulation would not be present at all. Manipulation requires that I be led to play the piano in ways that bypass my capacity to rationally evaluate the worth of the activity. So, for example, a teacher might motivate me with tales of fame and glory to be achieved; or more basely, with monetary rewards, peppermints, etc. But doing so involves teaching that playing the piano is valuable not because it is good for me in the sense of aligning with ideals of the good life that I personally endorse. Rather, it involves deceiving me into believing that

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attention of a multitude of philosophers. However, I think that it is possible to bypass the question of what is truth while still alluding to it as an antithesis of deceit.

the worth of playing the piano involves the achievement of external rewards. Under these circumstances the project of playing a piano, though it may be a worthy pursuit in and of itself, is undertaken on false pretexts.

From an autonomy based liberal perspective the problem with being deceived into playing piano lies in the intentional bypassing of an individual's rationality that results in the individual living in a faux world. It is obvious that the manipulator does not believe that playing piano will really lead to fame or that the value of playing piano lies in monetary gain. However, rather than revealing the harsh and complex reality of having to practice for hundreds of hours before reaping the intrinsic benefits of music, it is deemed to be more expedient to intentionally deceive the pupil into living in a fake reality; a reality where classical pianists become overnight sensations and moldy peppermints are worth hours of diligent practice.

In order to help illustrate why living in a faux reality, where individual reasons for pursuing projects are not based on the real reasons for pursuing these projects, is considered to hinder the pursuit of a good life, it is essential to explore why a life lived under false pretexts is negative. The best technique through which to determine why living in a faux reality is not conducive to a good life is to isolate concepts in such a way as to pinpoint the location of our intuitions. In *Autonomy and Schooling*, Eamonn Callan uses Nozick's experience machine to perform such an isolation experiment on the good life and autonomy. A recap of Nozick's hypothetical situation is as follows:

Suppose there were an experience machine that would give you any experience you desired. Superduper neuropsychologists could stimulate your brain so that you would think and feel you were writing a great novel, or making a friend, or reading an interesting book. All the time you would be floating in a tank, with electrodes attached to your brain. Should

you plug into this machine for life, preprogramming your life experiences? (Nozick, 1974, p. 42-43).

Nozick deduces that most people would find it unacceptable to be attached to the experience machine for any length of time. He then adjusts the situation to double and then triple the function of the machine to include transformation of the person and the ability for actions to create practical results in the real world. Despite these modifications, Nozick claims that people will still not want to plug into the machine. The basic reason for this refusal is that what we value in life is not experiences alone (Nozick, 1974, 43). We will now switch over to Callan's interpretation of the scenario. Callan believes that the problem with the machine is that you must preprogram it before entering and it therefore fails to allow people to live their own lives or in other words to make autonomous decisions (1988, p. 44).

If Callan is correct, then the machine should become acceptable with a bit more tweaking. Thanks once again to the superduper neuropsychologists there is now an autonomy machine. Unlike its predecessor where one could only make decisions prior to plug in (Nozick, 1974, p. 42) the participant can now rationally revise their ends while remaining in this blissfully fake world. Now, while imagining that you are playing chess against Bobby Fisher, inventing insulin, or feeding the world's hungry, it is possible to recognize the futility of your hallucinations and abandon them in favour of potentially more thrilling fantasies, all without unplugging!

Somehow the ability to rationally revise projects does not make the situation much better. Although the addition of autonomy might make living in a tank attached to electrodes more palatable, there remains a deficit of authenticity. Autonomy alone does

not seem to play as large of a role as Callan envisioned. The ability to make rational choices is not the reason behind our aversion to the experience machine.

In order to better explain our hesitancy in accepting the experience machine, it will be beneficial to revisit exactly what plugging in entails. The experience machine essentially creates a duplicate, though artificial world in which one may exist in physical isolation from the real world. All achievements, social factors, experiences of enjoyment, love, hate etcetera, have been duplicated. The main difference, and an extraordinary one, is that the experience machine creates a world where you can choose to be more successful at pursuing the good life than you may be in the real world. However, while the experience machine takes you on a remarkable journey you will still be attached via your electrodes to a computer. You are being manipulated by the computer into believing that your projects and life are of value while you are meanwhile a biological appendix to a piece of silicone.

As Nozick initially pointed out, despite the overwhelming incentive to plug into such a machine for life, few people will choose to do so. I propose that the reason for this hesitancy is that individuals are willing to forfeit the advantages of the experience machine simply because it is a life based on deceit. To live a life of bliss in a fake world is to live a life of deception that is further removed from the truth than one could be and no amount of duplication could account for this crucial difference. Therefore, contrary to both Nozick and Callan's conclusion, the reason that we hesitate to plug into any machine for life is that we do not value living in a world that is manipulated by a machine, as it is a life based on a series of deliberate falsities.

Nozick's thought experiment, when taken to its furthest reaches, brings us to the

conclusion that a life plugged into a machine is unacceptable because it is based on deception. But what does this tell us about autonomy? It is clear that Callan's bid for autonomy as the primary reason for rejecting an experience machine has failed and this in turn undermines his claim that autonomy is good for its own sake. But this failure does not mean that autonomy is not an essential component of the good life, it only indicates that its value cannot be proven positively but must rather be demonstrated through negation. Autonomy has value because it is the most viable alternative to a life that is not based on deceit.

It has previously been shown that endorsement is a fundamental component of the good life and it has also been shown that there are two ways through which endorsement can be gained; autonomy and manipulation. Manipulation by good life experts has an advantage in that good life experts should be able to use their expertise to direct individuals in ways that are more conducive to the good life than what can be achieved through individual autonomy. However, the advantage that manipulation holds over autonomy is negated by the problematic nature of deceit. In the world created by the wondrous reality machine everything within the society is contingent on the success of the manipulators, who are in this case the superduper neuropsychologists. In a similar sense, a real world that is dominated by good life experts who manipulate a population into pursuing a good life is one that is also structurally dependent on deceit. In both of these cases manipulation is unacceptable and creates societies in which a good life cannot easily be realized.

In review, our initial intuition that manipulation is an unacceptable precondition to the good life has now been shown to relate to deceit. Even though it would be difficult to

prove that those who accept to live their lives in the wondrous reality machine can never achieve the good life, it is a noteworthy point that our distrust of a good life based on the success of deceit does provide strong grounds in favour of utilizing autonomy rather than manipulation in order for people to endorse certain projects.

### **Concluding Thoughts**

In conclusion, Kymlicka's rationale for autonomy as a cornerstone of liberalism is flawed in its justification but accurate in its conclusion. A successful argument for autonomy cannot be entirely based on uncertainty of what the good life is or on a need for endorsement. When one acknowledges varying levels of expertise, the possibility of being mistaken about our ends does not necessarily lead to a need for personal rather than general revision. The need for personal endorsement also fails to justify an exclusive use of individual autonomy as endorsement can also be garnered through manipulation. However, the need for endorsement when coupled with the problematic nature of manipulation creates a convincing argument in favour of autonomy. Therefore, autonomy has been and should remain a foundational feature of liberalism. The primacy of autonomy in liberalism has important implications for minority rights in Canada. As a liberal democratic society it will be necessary for any version of minority rights to be based on or at least coincide with autonomy. In the next chapter we will explore the intricacies of the relationship between autonomy and minority rights.

## Chapter Two

### A Liberal Case for Minority Rights

So far I have defended the primacy of autonomy in liberal theory and have demonstrated the fundamental role it plays in garnering the endorsement that is necessary in a rewarding pursuit of the good life. Despite the fact that this argument is philosophically compelling in and of itself, it is not immediately apparent how the value of autonomy relates to minority rights. This chapter seeks to establish and clarify this connection. As such, Will Kymlicka's foundational work in this area will be explored, with a focus on his earlier publications<sup>4</sup> that outline the basic structure of autonomy-based minority rights. Later in the chapter, what I see as the strongest threat to Kymlicka's theory will be laid out as an inability to demonstrate why individuals in minority cultures should be protected from undergoing a gradual transition to another culture. In order for Kymlicka's theory to stand, it is necessary to demonstrate how it might be theoretically possible to encourage autonomy and the transitions that stem from it while simultaneously claiming that whole-scale transitions are harmful to autonomy. Kymlicka's attempt to resolve this tension will be shown to be lacking and a revised theory will be presented that demonstrates a crucial difference between the transitions that autonomy produces and the more radical whole-scale transitions that threaten a culture. However, even after proving that valuing autonomy can be theoretically consistent with opposing whole-scale transitions, there is still the need to demonstrate how autonomy might also provide a justification against whole-scale

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<sup>4</sup> Kymlicka, W. (1989). *Liberalism, community and culture*. New York: Oxford University Press.

transitions. As such, Kymlicka's and then an alternative theory will be given that shows why transitions undermine autonomy.

### **Autonomy and Minority Rights**

As previously mentioned, the connection between autonomy and minority rights is not readily apparent, so the first task of this chapter is to clarify and explain the connection as Will Kymlicka draws it. In *Liberalism, Community and Culture*, Kymlicka attempts to demonstrate that autonomy is not only relevant to minority rights but that it is a substantial enough value to formulate an entire theory of minority rights on. His theory is based on the premise that autonomy cannot be exercised in a cultural void; there needs to be a cultural medium in which actions take place and where individuals can critically evaluate and choose among different meaningful options. Kymlicka labels this medium a 'context of choice' and defines it as "the range of options passed down to us by our... culture" (Kymlicka, 1992, p. 140). A context of choice is dependent on the specific aspects that compose a culture to create unique ranges of options for individuals to choose between. In linking a context of choice to culture, Kymlicka draws together autonomy and culture; without culture there is no context of choice and without a context of choice, autonomy cannot be exercised. The connection between autonomy and culture in this particular sense establishes the grounds needed for liberals to defend those minority rights that protect culture.

Kymlicka's theory provides an innovative account of why liberals should attempt to ensure that individuals have access to culture. Yet as John Danley points out, his theory "does not demonstrate that gradual voluntary assimilation to a larger, less specific

community or to another culture constitutes a wrongful harm to specific persons or to society” (1991, p. 179). The important point arising from Danley’s observation is that Kymlicka fails to distinguish between two different claims: it is one thing to argue that a culture is needed but another to justify why a particular culture should be maintained and that transitions to new cultures be avoided. If Kymlicka’s theory is to pass through the crucible of this challenge unscathed it will have to prove that transitions are not conducive to autonomy.

### **The Transition Dilemma**

Before moving on to specific arguments that can be made against transitions there is a potential obstacle that must be cleared. A problem that is present in any autonomy based liberal argument against transitions is that to at least some extent transitions are the byproduct of the autonomous reflection and choice making of individual cultural members. On the one hand if liberals are to argue against cultural transitions, it appears as though they must also accept that they are limiting autonomy. This is problematic as maximizing autonomy is the initial justification for cultural protection in the first place. On the other hand if liberals allow autonomy then they must be prepared to admit that specific cultures cannot be protected against transitions created by autonomous decision-making members.

John Tomasi takes the above argument further by claiming that protecting a minority culture from transitions is not only contradictory but also anti-liberal as it betrays the deep-seated notion of progress that the founders of modern liberalism hold dear. For a society to move forward it needs to permit and enable change in order to

transcend its present faults. The adaptability that must be allowed or even encouraged within a society is only possible if there is a degree of instability. According to Tomasi “a certain degree of cultural instability-including an instability that affects the deep sources of people’s beliefs about value-not only goes along with but is a precondition of social progress” (1995, p. 591). If the above points prove to be accurate then it would appear as though autonomy liberals need to reevaluate the claim that transitions are harmful to cultures.

### **Cultural Structure and Cultural Character as a Solution to the Transition Dilemma**

Kymlicka attempts to resolve the dilemma of transitions by claiming that there are two separate aspects of culture, with one aspect needing to remain stable and therefore requiring protection while the other is capable of absorbing the transitions that are part of living an autonomous life. Kymlicka refers to the first aspect as cultural structure and the second as cultural character.

Cultural structure<sup>5</sup> is comprised of language and history (Kymlicka, 1989, p. 165) and it is through language and history that we come to an “awareness of the options available to us, and their significance; and this is a precondition of making intelligent judgments about how to lead our lives” (Kymlicka, 1989, p. 165). It is evident from the above definition that cultural structure consists of the core material that is needed for

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<sup>5</sup> Kymlicka later rejects the term ‘cultural structure’ in favour of ‘societal cultures’. His reasoning for doing so is that ‘cultural structure’ can be “a potentially misleading term, since it suggests an overly formal and rigid picture of what... is a very diffuse and open-ended phenomenon. Cultures do not have fixed centres or precise boundaries” (Kymlicka, 1995, p. 83). However, Kymlicka does validate the general idea behind cultural structure in saying “the availability of meaningful options depends on... understanding the history and language of that culture” (1995, p. 83). As such, I will continue to use ‘cultural structure’ in this chapter, in order to avoid confusion between his earlier and later work.

individual autonomy. It is also important to note that Kymlicka believes that cultural structure needs to remain relatively unchanged and he makes several amendments to his original definition to ensure clarity. John Tomasi points out that originally

the good associated with cultural membership is presented simply as the good of there being a cultural structure, a context of choice (pp. 162-66). But later this concept is presented with an unannounced parenthetical modifier: the good is described as that of a “(stable) context of choice” (pp. 167). Still later, the parentheses drop and the primary good is described as that of “a *secure* cultural context of choice (pp. 169 and 170; emphasis mine) (1995, p. 587).

These modifications demonstrate that Kymlicka places significant importance on the ability of cultural structure to remain relatively unchanged throughout transitions.

The other aspect of culture is cultural character, which consists of “the norms, values, and their attendant institutions in one’s community” (Kymlicka, 1989, p. 166). It is crucial to note that Kymlicka does not believe that cultural character should be protected alongside cultural structure. Cultural character should be left to the discretion of those who belong to the culture and they should be “free to modify the character of the culture, should they find its traditional ways of life no longer worth while” (Kymlicka, 1989, p. 167).

To further illustrate the distinction between cultural structure and cultural character and thereby gain a greater understanding of how autonomy may lead to changes in cultural character without radically altering cultural structure, we will look to Kymlicka’s example of Quebecois culture during the Quiet Revolution. In the period of the Quiet Revolution Kymlicka claims that radical changes occurred in cultural character without affecting the cultural structure in Quebec. The prominence of many traditional institutions faded while new ones emerged, religious and political beliefs were

scrutinized and re-formed into permutations that scarcely resembled their former selves and societal norms underwent dramatic changes. In summary, cultural character underwent a radical transformation. Yet in the midst of this upheaval Kymlicka maintains that the existence and security of a distinctly Quebecois cultural structure was never threatened or questioned (1989, p. 167). Implicitly, throughout the Quiet Revolution there was no doubt as to the prominence of the French language and the attachment to a shared history, even as the particular norms, values and institutions underwent radical change.

An important aspect of this example is Kymlicka's claim that cultural structure and cultural character are capable of acting independently of each other, with monumental changes occurring in one while the other remains relatively stable. Exercising autonomy dramatically altered cultural character but did not uproot or even call into question the cultural structure of the Quebecois. In the above example, cultural structure is shown to be impervious to the type of autonomy that individuals within a culture can exercise. This allows Kymlicka to claim that individual autonomy can entail changes in cultural character but not in cultural structure. Autonomy liberals can now argue that transitions in cultural character are an inevitable and acceptable result of autonomy while transitions in cultural structure are negative but do not necessarily stem from actions of individual autonomy. The ability to act independently permits protection of cultural structure and therefore autonomy, while allowing individuals to revise cultural character. If the distinctions that Kymlicka draws are correct he can then move on to explain why transitions within cultural structure are harmful and need to be prevented.

### **Kymlicka's Failed Attempt to Solve the Transition Dilemma**

Unfortunately for Kymlicka, Kevin McDonough presents a convincing argument that claims cultural structure is intimately and inextricably connected to cultural character. The strongest and most relevant aspect of McDonough's proposal is that changes in cultural character can either directly or indirectly affect cultural structure. McDonough claims that changes in cultural character may trigger a series of events that lead to changes in cultural structure. He states that

clearly, some apparently benign changes to the cultural character of a group may turn out in the future to be profound threats to the group's history, language, and culture. More importantly, it is impossible, a priori, to determine which changes will turn out to constitute such threats and which ones will not (1998, p. 475).

This poses a potential problem for a theory that pledges to only protect cultural structures, as in some cases it would be necessary to also protect cultural character in order to insure the security of the cultural structure. However, it is impossible to accurately predict when changes in cultural character will overflow to affect the cultural structure. Thus, the only sure way to ensure that cultural structure will not be compromised is to also protect cultural character, but at this point it would be unclear whether there is any utility in actually separating the two.

McDonough postulates that *any* "change to a group's cultural character is a threat to its language, history, and culture. And therefore, in order to have the conditions for personal autonomy and self-respect, a group's cultural character must be protected from change" (McDonough, 1998, p. 476). In support of this stance is the fact that norms, values, and especially institutions have an indisputable effect on how language and history are perpetuated. Institutions are the gatekeepers of language and history as they exercise tremendous influence on what is carried forward to future generations and what

is excluded. Therefore, whenever there is a change in the cultural character of a society there will be a ripple effect that will potentially change, at least to some degree, the cultural structure of the society. In Kymlicka's example of the Quiet Revolution, it could be argued that the changes to the cultural character have led to significant permutations in language which have only been mitigated by strong government interventions, or that their impacts will only be felt by future generations of Quebecers.

It is now evident that Kymlicka's distinction between cultural structure and cultural character is one that cannot be maintained. Following from this it is apparent that autonomy liberals have yet to provide a convincing argument as to how autonomy and cultural protection can co-exist.

### **An Alternative Perspective to the Transition Dilemma**

Although Kymlicka's attempt to solve the dilemma that transitions create is unsuccessful, there remains another position that autonomy liberals can take. It is possible that the dichotomy between the need for a stable culture verses the need for transitions to occur as a result of autonomy has been overstated. There seems to be space between these two extremes where autonomy can produce transitions and not threaten cultural stability. Though a culture needs to be somewhat stable, there does not seem to be a reason to interpret Kymlicka's use of stable to mean static. A culture can be considered to be stable while at the same time displaying some degree of fluidity.

The dilemma of transitions might be resolved if we reflect on an important and apparently uncontroversial fact that the discussion has so far obscured. This fact is that cultural stability need not be an all or nothing affair. Cultural stability comes in degrees.

Thus we might think of cultural stability as referring to a continuum along which different cultures fall depending on the extent to which they resist change and the individual reflection that results in cultural change. At one extreme, we might think of extremely rigid, orthodox and conservative cultures which resist or forbid attempts by individual members to depart in even minor or trite ways from existing cultural norms, practices and values. As rough exemplars we might think of the Old Order Amish or Ultra-Orthodox Hassidic Jewish Communities. At the other extreme are bohemian cultures whose only fixed and static norms are those endorsing and recommending creative cultural change, challenge and innovation. Here we might think of certain stereotypical artist communities as exemplars. Now, these two extremes represent at one end cultures that demand stability at the expense of personal autonomy and at the other end cultures that prize autonomy as a paramount cultural value while rejecting the value of cultural stability. If we were forced to choose among these two extremes, then of course it would seem that we must choose between protecting almost completely unchanging cultures or rapidly changing, transforming and transient cultures on the other. It would be a choice between cultures that value complete or near complete moral heteronomy or complete or near complete individual autonomy on the other. But in practice it is obviously not the case that these are the only two choices a liberal state faces. The reality is far more complex. The question is whether Kymlicka's theory can be adapted to account for this more complex reality.

Kymlicka does not, at least in *Liberalism, Community and Culture*, attempt to refine his theory in light of this more complex and nuanced conception of culture. But once we understand the notion of cultural stability (and correspondingly, the capacity for

personal autonomy) as existing on a continuum between these two extremes, it becomes possible to see how Kymlicka might adapt his theory in a way that makes it more sensitive to cultural complexity. It is clear that most cultures for which Kymlicka seeks to develop a theory of minority cultural rights exist at points on the continuum that lie quite far from either extreme. As such, most cultures for which a liberal theory of cultural rights would afford protection will be 'mid-range' cultures that embody or seek to embody some more moderate balance of stability in culture on the one hand, and the promotion of individual exercise of autonomous reflection and revision of existing culture on the other hand.

The version of cultural stability that has been presented here permits autonomy liberals to protect cultural stability while acknowledging that autonomy does require a certain degree of change. In practice, being able to protect cultural stability while allowing for some flexibility entails protection against whole-scale, rapid transitions *between* cultures that threaten stability while permitting more gradual transitions *within* cultures that stem from individual autonomy.

### **Why Kymlicka Believes Transitions are Negative**

It has now been shown that it is *possible* for autonomy liberals to protect cultures from whole-scale transitions but it has yet to be shown that these transitions are undesirable and that minority cultures should be protected from them. To address the issue of why transitions should be avoided we will first look to Kymlicka's theory, which claims that transitions are harmful because they ignore the deep-rooted attachment that people have towards the culture into which they are born.

Kymlicka argues that particular cultures should be protected because individuals have a deep attachment to the culture that they are born into. Humans have a bond with their culture that lies “deep in the human condition, tied up with the way humans as cultural creatures need to make sense of their world” (Kymlicka, 1995, p. 90). If a culture is not protected there is a possibility that individuals will no longer be able to make sense of their world or in other words no longer be able to rationally evaluate their projects in a way that is necessary for autonomy. It is therefore evident that losing one’s culture cannot be treated like “the loss of one’s job” and “language training for members of a threatened culture...like worker retraining programmes for employees of a dying industry” (Kymlicka, 1995, p. 84). Such a stance would seriously jeopardize an individual’s chances of leading a good life as it underestimates the importance of the bond that people have to their particular culture and the role that plays in making sense of the world.

However, Kymlicka’s argument is problematic, as at its root it fails to coherently explain why a deep bond with one’s culture is needed to make sense of the world. It is self-evident that *a* culture is necessary to make sense of the world but it is much less clear as to whether a bond to a particular culture is grounds enough to rule out whole-scale transitions. Although bonds are important aspects of our lives, individual autonomy requires these attachments be held in question and be capable of revision and transformation. The underlying current that runs through theories of autonomy is that bonds to culture, family, friends, etc. are subject to change. It is extremely difficult for Kymlicka to maintain that all bonds expect for cultural ones should be subject to scrutiny and potential change.

To help clarify the importance of revisable bonds to autonomy liberals, we can return to Kymlicka's original justification of autonomy. Kymlicka recognizes that the self has a deep bond with the projects that we engage in, but he also acknowledges that it is more important that individuals be capable of autonomous decision-making. Thus there are no projects above revision. However, the bond with one's projects makes it "not easy or enjoyable to revise one's deepest ends, but it is possible, and sometimes a regrettable necessity (Kymlicka, 1995, p. 91). Thus, Kymlicka admits that our ends, which are at the most fundamental level a part of our selves, can and sometimes must be, exchanged for others. This compromise allows Kymlicka to defend the importance of autonomy in the face of the attachments that we may have.

The fact that Kymlicka places autonomy over the bonds that we have with our projects brings us to the next point; if revising one's ends can be deemed necessary though regrettable, why should revising one's culture not be considered in certain circumstances to be necessary though regrettable? The reluctance that Kymlicka has for transitioning between cultures cannot be justified while maintaining that autonomy is worthwhile and practical. It is notably difficult to transition to new horizons of choice but it is at least as difficult to change one's projects. The mere fact that people have deep attachments to features of their lives, whether they be projects or cultures, does not mean that these features should be above reproach. Though difficult and costly, under certain circumstances it may be beneficial or necessary to abandon what a person holds dear. In the case of projects, the necessity of revision is based on the need for endorsement, which is wholly connected to pursuing a good life. On the other hand, the transitioning from one culture to another might be obligatory for a variety of reasons ranging from physical

forces, such as changes in technology or depletion of resources, to more philosophical ones such as demands of justice. Therefore, it can be argued that it is difficult and regrettable but in some cases also necessary for people to undergo a whole-scale transition in their culture.

In summary, the problem with Kymlicka's stance against transitions is that it exclusively relies on the bonds that people have with the culture into which they are born. However, if Kymlicka believes that autonomy is more important than personal attachments then there does not seem to be a reason to protect minority cultures against whole-scale transitions. Therefore, it is evident that another more convincing rationale needs to be provided in order for autonomy liberals to support minority rights.

### **Kymlicka's Last Stand and the Need for Restrictive Culture**

As has already been pointed out, within Kymlicka's theory there does not seem to be a valid reason to protect minority cultures against whole-scale transitions. In this section of the chapter, I explore the possibility that minority rights can be justified by adapting Kymlicka's theory. What I propose is that whole-scale transitions are negative because they create too much choice or are not adequately restrictive. When there are too many available options, it becomes impossible for individuals to gain adequate knowledge of what each option entails. This in turn undermines the ability of autonomy to contribute to a good life, as without adequate knowledge of the available options, choice and revision become a meaningless guessing game.

When whole-scale transitions occur the individuals who are caught up in them are faced with an increased number of options to choose between. There are options

available from their previous culture as well as a plethora of new options from the culture into which they are transitioning. Meanwhile, the knowledge of options from the old culture rapidly fades and new knowledge concerning options in the culture that they are transitioning into is slow in coming. Knowledge of options is not easily transplantable, as it is specific to the society in which it was produced. The creation of knowledge in culture is a slow evolution that narrows the number of possible projects until there are few enough to comprehend the likely outcome of pursuing each one. Access to generations of experience is required before an individual can accurately evaluate options by observing the lives and listening to the stories of people whom they respect. Thus, when a whole-scale transition occurs the acquirement of new knowledge or the transference of old knowledge will take quite some time; in the interim while this new knowledge is developing individuals cannot make truly autonomous decisions, as they do not have the tools to rationally revise their ends.

### **A Further Explanation of Restrictiveness**

At the core of my argument is the concept that an essential feature of culture has so far been overlooked by Kymlicka; cultures do not only create horizons of choice by *enabling*, they also create horizons of choice by *constraining*. The problem with whole-scale transitions is that they are not restrictive enough. As Rob Reich points out

cultures constrain as well as enable. Importantly, societal cultures are not all equivalent in their capaciousness. Despite the fact that societal culture is defined broadly, some societal cultures provide for much narrower ranges of options than others; some have more restricted menus of sanctioned roles than others (2003, p. 315).

What I wish to argue is that the constraining aspect of culture is precisely what allows it

to be enabling and that restriction plays an integral role in creating a context of choice that is conducive to exercising autonomy. Constraints permit us to gain the knowledge needed to more accurately predict what results decisions will yield. It is important for there not just to be options available, it is also essential for the individual to have the information needed to *intelligently* decide between them (McDonough, 1998, p. 485; Kukathas, 2002, p. 410).

Without culture we would hypothetically be left with a nearly infinite number of possibilities. As Clifford Geertz famously points out “men without culture would not be the clever savages of Golding’s *Lord of the Flies* thrown back upon the cruel wisdom of their animal instincts; nor would they be the nature’s noble men of Enlightenment primitivism...they would be unworkable monstrosities” (1975, p. 49). The reason for this bleak portrait of cultureless man is that modern humans lack the instincts that other species have, and although this increases our adaptability it has the side effect of leaving us with little direct guidance as to what we should occupy ourselves with. We have basic needs to fulfil but these needs are too general to help us much. We need food but this still leaves several pressing questions: What should we eat? Meat? Vegetables? Grains? How should we obtain it? Hunting/gathering? Growing crops? Who should produce the food? Everyone? Only certain people? How should we distribute the food? Based on need? Or merit? Or luck? This is by no means a comprehensive list but it does shed light on how much choice we are given compared to other species who have these things more or less dictated to them. The point that I wish to take from this is that the primary task of a culture is not only to expand possibilities but also to limit them.

During whole-scale transitions, the limiting function of a culture breaks down. To

help illustrate this failure, I will delve into my history as an occupant of a culture that is undergoing a whole-scale transition from a number of minority groups into the dominant Canadian culture. My mother is a French Canadian who was raised with a strong sense of French history and language. Yet through marriage to a man of English and Mennonite descent and relocation next to an Icelandic community she began to lose much of her identity as a French Canadian. Meanwhile, my father never learned the German of his ancestors but did retain many of the values passed down from his Mennonite heritage. Needless to say I was raised in a cultural salad bowl with Menno Simmons and Jón Páll Sigmarsson spending many a teatime munching on tarte au sucre. I am a part of several cultures and yet wholly none of them. I cannot claim to exist within a French culture as I cannot speak French, nor do I speak German. I am tragically a monolingual Anglophone but my knowledge and connection to English history is slight. The hybrid culture that I am a part of is a rapidly transforming one with mergers and adaptations being one of its defining features. As a result of this unstable landscape I find myself in an under restrictive culture with a plethora of new options and little knowledge of what each may entail.

As an occupier of an under restrictive culture, I am continually faced with the challenge of too many options. The fragments of knowledge that were passed down from previous cultures has hardly prepared me to choose between the dazzling array of available options that remain open to me from Canadian culture. In the town I was raised in there was a small pharmacy that doubled as the candy store. I was/am the naive farmboy that stumbles through the door into a world of possibility. What is the difference between everlasting gobstoppers and Valium? I can't read, write, or speak the medicalese

of the pharmacist. I learned to grab and go. The more confidence you radiate the less you are questioned. At seventeen, I sat down with my parents and began to consider a myriad of career possibilities. I could become a doctor, but all I knew of doctors was that they wore white coats and placed cold stethoscopes on your chest. Sounds boring. Maybe a lawyer then? They get to be chased through back lanes by gun wielding thugs. Perhaps too risky. Finally, I settled on teaching, though as a homeschool student I had little idea of what this career might entail.

The experience I am describing here is not an isolated incident. Milan Kundera writes the following about a man who chose a career that had adverse effects on his pursuit of a good life.

Fully aware that life is too short for the choice to be anything but irreparable, he had been distressed to discover that he felt no spontaneous attraction to any occupation. Rather skeptically, he looked over the array of available possibilities: prosecutors, who spend their whole lives persecuting people; schoolteacher, the butt of rowdy children; science and technology, whose advances bring enormous harm along with a small benefit; the sophisticated, empty chatter of the social sciences; interior design (which appealed to him because of his memories of his cabinetmaker grandfather), utterly enslaved by fashions he detested; the occupation of the poor pharmacists, now reduced to peddlers of boxes and bottles. When he wondered: what should I choose for my whole life's work? his inner self would fall into the most uncomfortable silence. When finally he decided on medicine, he was responding not to some secret predilection but rather to an altruistic idealism: he considered medicine the only occupation incontestably useful to man, and one whose technological advances entail the fewest negative effects.

The letdown was not long in coming, when in the course of the second year he had to do his stint in the dissection room: he suffered a shock from which he never recovered: he was incapable of looking squarely at death; shortly thereafter he acknowledged that the truth was even worse: he was incapable of looking squarely at a body: its inescapable, unresponding imperfection; the decomposition clock that governs its functioning; its blood, its guts, its pain.

Thus, he studied medicine for three years before giving up with a sense of shipwreck. What to choose after those lost years? What to attach to, if his inner self should keep as silent as it had before? He walked down

the broad outside staircase of the medical school for the last time, with the feeling that he was about to find himself alone on a platform all the trains had left. (1997, p. 67-68).

In the above example the protagonist is faced with a difficult decision but lacks the knowledge that is needed to understand what the available options entail. His confusion mimics my own as a vast number of options are presented without substantial knowledge of any of them. The result in his case was disastrous with the years spent in medical school considered to be 'lost'. These wasted years underline the importance of having an adequate knowledge of the available options. If the protagonist in the story had known beforehand what the medical profession truly entailed he would have been spared the precious time and effort spent on a project that did not contribute to a good life.

It would be easy to jump to the conclusion that all individuals who live in an under restrictive culture cannot lead a good life. However, this would be an obviously misleading interpretation as it is clearly evident that many individuals in under restrictive cultures do have good lives. As Waldron points out, it would seem that "a freewheeling cosmopolitan life, lived in a kaleidoscope of cultures, is both possible and fulfilling" (1992, p. 762). But it is also true that the chance of living a good life may be left to luck rather than to calculated choices.

In conclusion, cultures that are under restrictive fail to place enough constraints on the options that are available to individuals. The vast number of options in these cultures makes it difficult to gain adequate knowledge of what each choice entails. In the case of transitioning cultures the difficulty of obtaining adequate knowledge is aggravated by the length of time that is needed to build up the collective experiences that

are required to rationally revise one's ends. In effect, the need for what I will call an adequately restrictive culture provides the grounds that are needed to argue against whole-scale transitions while permitting transitions that evolve from within a culture.

### **Concluding Thoughts**

Kymlicka's theory of minority rights has been found to be incapable of explaining why minority groups should not be required to transition to another culture. The main reason behind this is that he places too much value on the bond that individuals have to their cultures and this is inconsistent with a theory that values autonomy over personal attachments. Despite Kymlicka's failure to articulate a convincing reason to protect minority cultures against transitions, there remains another option. By adapting Kymlicka's theory to focus on the need for adequately restrictive cultures it is evident that autonomy liberals can consistently oppose transitions because they create too many options and not enough knowledge. Therefore, even though Kymlicka's reasoning is misleading his overall conclusion to protect minority cultures is not.

## **Chapter Three**

### **The Dilemma of Illiberal Minority Groups**

In chapter two I laid out an argument in favour of protecting minority groups from whole-scale transitions. This chapter will expand the discussion by addressing a predicament that stems from protecting minority groups that may be illiberal. A liberal defense of minority rights is faced with a dilemma when it comes to protecting cultures that do not place value on autonomy or that go so far as to insure that autonomy is restricted amongst its members. This is problematic for liberals, since a culture that shuns autonomy is obviously undermining the basic premise of liberal minority rights, which is to encourage personal autonomy. On the other hand, if a liberal society decides to interfere with cultures that do not promote autonomy there is a strong possibility of unraveling the culture that is needed to create a context of choice. This puts a liberal theory of minority rights in a difficult position. It seems as though both supporting and interfering with illiberal cultures will lead to a reduction of autonomy.

In order to address this issue we will first examine how Kymlicka attempts to resolve this dilemma. However, it will be shown that the responses given by Kymlicka do not adequately address the issue that is at stake. Lastly, I reiterate that constraints and restrictions that are often classified as illiberal are actually necessary aspects of liberal societies but that in the case of gross violations of individual rights there is a recourse available that can be justified through autonomy.

### **Kymlicka's Response to Illiberal Minorities**

Kymlicka addresses the problem presented by illiberal minorities in two separate

ways depending on whether the group in question is a national or ethnic minority. To Kymlicka, national minorities are groups who are a “historical community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language and culture” (1995, p. 11). On the other hand, ethnic minorities are composed of groups of immigrants who share a common culture but have the expectation of working within the dominant political structure (Kymlicka, 1995, p. 14-15). Based on these distinctions, Kymlicka grants national minorities more freedom to act illiberally than he does to ethnic minorities. Due to the difference between these two distinctions and the separate treatment that Kymlicka gives them, it will be necessary to examine both illiberal national minorities and illiberal ethnic minorities in turn.

Kymlicka presents a nuanced theory for the treatment of illiberal national minorities. Initially he claims that a liberal government does not have the authority to intervene in the affairs of national minority groups and that “the majority will be unable to prevent the violation of individual rights within the minority community. Liberals in the majority group have to learn to live with this, just as they must live with illiberal laws in other countries” (1995, p. 168). This noninterference stance is a strong one and Kymlicka tempers it through a qualifier that states, “a liberal view requires *freedom within* the minority group, and *equality between* the minority and majority groups” (1995, p. 152). This leads to the conclusion that liberal states should not hesitate, and in some cases are required, to speak out against national minority groups that do not provide this form of freedom. Speaking out can take three forms; the first is by lending support to those within the national minority culture that are attempting to liberalize it, the second is to provide incentives for liberal reform, and the third is to create international

mechanisms that promote individual rights (Kymlicka, 1995, p. 168-169). Besides the three universally approved ways for liberals to extend their influence on minority groups, Kymlicka also leaves open the possibility of using open intervention in the event of “gross and systematic violation of human rights, such as slavery or genocide or mass torture and expulsions” (1995, p. 169). Therefore, despite the fact that Kymlicka calls for no interference in illiberal national minority cultures he provides three techniques through which to influence liberalization as well as a rider that allows blatant interference in certain circumstances.

In the case of ethnic minorities, Kymlicka takes a different stance. The voluntary nature of immigration and the desire of many of the members of ethnic minorities to integrate into the existing political system means that they do not have the same right to protection as national minorities. Kymlicka believes that it is not wrong “for liberal states to insist that immigration entails accepting the legitimacy of state enforcement of liberal principles, so long as immigrants know this in advance, and none the less voluntarily chose to come” (1995, p. 170). Therefore, ethnic minorities do not receive the same degree of cultural protection as national minority groups.

### **The Protection of National Minorities**

Despite the nuanced approach that Kymlicka takes concerning national minorities, the ramifications of this theory create a puzzling dilemma. Can a liberal society actively protect the culture of a national minority while at the same time attempting to transform it into a more liberal society? At least on the surface, these two measures are essentially contradictory as intentionally engineering one aspect of a society may lead to whole-scale

transitions; this is especially true when one considers the complex and interconnected nature of culture. For Kymlicka to counter these claims it is necessary to demonstrate that protection can be offered while at the same time allowing illiberal aspects of a society to be excised. Lastly, if protection does not rule out the meddling of the dominant society then what does it mean and why would minority groups want it?

Offering protection from whole-scale transitions while at the same time encouraging transformation is self-defeating because the effort to protect a minority culture from whole-scale transitions will often be undermined by promoting the transitions necessary to liberalize certain aspects of that society. The likelihood or even possibility of being able to surgically remove illiberal aspects of a culture without causing damage to the culture itself is doubtful. The illiberal aspects of a culture are often deeply held beliefs and institutions that are intertwined in the language and history of a people. Some threads cannot be pulled without unraveling the tapestry.

To demonstrate the interconnectedness of cultural aspects it is helpful to consider the task of separating a potentially illiberal practice from the culture that endorses it. In the example of circumcision within Jewish culture, it can be argued that male circumcision violates the liberal concept of revisability and informed consent (Shweder, 2009) and following from this it could be postulated that Jewish people should theoretically abandon the practice. In situations where a Jewish community existed as a national minority in a liberal society, Kymlicka's theory would in practice require the dominant society to 'speak out' against the ritual of circumcision. However, if one of the techniques of intervention that Kymlicka recommends was successful it is doubtful that Jewish culture as a whole could remain intact. Circumcision is a firmly established

aspect of Jewish identity that stems from a particular interpretation of Hebrew Scriptures. Bringing circumcision into question is synonymous with challenging the methodology that is used to understand the Scriptures that provide the guidelines for living a Jewish life. If these guidelines lose their authority or weight then the seeds have been planted for a whole-scale transition. It is extremely risky to attempt to remove an illiberal aspect from a culture, as doing so can potentially lead to more dramatic transitions than were initially intended.

It been shown that attempting to surgically remove illiberal aspects of a society is not an ideal solution to the problem of illiberal minorities but there is a darker side to this contradiction as well. If excising certain illiberal aspects of a culture leads to whole-scale transitions then the initial offer of protection could be considered an act of deception. When Kymlicka's policy is applied to specific situations it is possible that protection and small-scale attempts at liberalization may actually compliment each other in working towards a unified end of whole-scale liberalization. To offer a national minority culture shelter and then attempt to undermine that protection is a form of doublespeak and could be read as an effort to lure a minority group into complacency only to pounce when their guard is lowered. It is therefore evident that Kymlicka's commitment to protecting illiberal national minorities while simultaneously attempting to liberalize certain aspects of their culture is not only contradictory but also potentially deceptive.

### **Kymlicka's Defense of Liberal Interference in National Minorities Culture**

In response to the claim that his theory is self-defeating, Kymlicka could assert that a culture can still be persevered while careful actions are taken to help remove the

aspects that are illiberal. Thus, rather than being self-defeating, it might be possible to coordinate protection and transformation so that they work in a consistent and mutually beneficial manner. This argument is made possible through the use of the distinction between external protection and internal restrictions.

Kymlicka describes external protections as rights that limit the impact of the larger or dominant society on the minority group. Essentially, external protection guarantees that a culture is safe from outside forces; it governs intercultural relations by limiting interference that could result in the deterioration of a culture (Kymlicka, 1995, p. 35). On the other hand, internal restrictions are a body of rights that allow minority groups to place restrictions on their members. Internal restrictions allow minority groups to have complete control over their members, which often involves a limiting of autonomy in order to insulate the culture from external influences. Internal restrictions typically lead to other violations of individual rights, such as unequal treatment based on sex and lack of religious freedom (Kymlicka, 1995, p. 36). Thus Kymlicka proposes that there are two distinct bodies of minority rights with external protection and internal restrictions requiring independent evaluation. This differentiation allows liberals to claim that they “can and should endorse certain external protections where they promote fairness between groups, but should reject internal restrictions which limit the rights of group members to question and revise traditional authorities and practices (Kymlicka, 1995, p. 37).

When applied to illiberal minorities the separation of external protection and internal restrictions is useful as it is readily apparent that the violation of individual rights and the excessive limiting of individual autonomy is something that occurs on the level of

internal restrictions and not on the level of external protection. Under Kymlicka's theory of minority rights, external protection should usually be granted to national minorities because it protects the culture that is needed for autonomy. The type of rights that external protections offer do not give cultures the power or ability to act illiberally. For example, granting "special representation rights, land claims, or language rights to a minority need not, and often does not, put it in a position to dominate other groups" (Kymlicka, 1995, p. 36). On the other hand internal restrictions are rejected because they are rights that can potentially shelter illiberal actions. Most actions that can be considered to be illiberal, such as excessively limiting the autonomy of women, are the type of rights violation that would be sheltered under the umbrella of internal restrictions. Granting the right to internally restrict a population is akin to giving a minority group the right to act illiberally. Therefore, the value of distinguishing between external protections and internal restrictions is that liberal governments can support contexts of choice through external protections while, through the rejection of internal restrictions, denying any right that would allow a culture to limit the autonomy of its members.

Being able to support horizons of choice while refusing to allow societies to limit the autonomy of their members is a convenient result of granting external protection while denying internal restrictions. However, it seems difficult to believe that a culture will be able to create a context of choice while not having the right to restrict the actions of its individuals.

### **The Problem with Internal Restrictions and External Protections**

Whether the division between internal restrictions and external protections is a

maintainable one has recently been explored by Rob Reich who claims that the distinction breaks down when applied to practical situations. The right to external protections cannot be exercised without creating internal restrictions. The example that Reich uses to illustrate this connection is the common demand of minorities to control their own education system. Control over education would almost certainly qualify as a manifestation of external protection, as it helps shield the group from external decisions; yet Reich points out that

cultural minorities whose survival is threatened by exposure to larger society will often seek to educate their children in restrictive ways. But whereas separate schooling in these cases does indeed provide a form of external protection for the adult members of a cultural group, it can also create an internal restriction for the children of the group (2003, p. 309).

Though Reich does not elaborate on what type of internal restrictions are created in the above cases, he does provide a concrete example of a religious group where external protection of schooling has led to internal restrictions. Reich claims that special educational rights for the Amish has led to internal restrictions since the “stated educational aims of the Amish and fundamentalists were not to enhance the autonomous choice-making capacities of children, but rather to diminish them” (2003, p. 310). In this context, external protection is utilized to filter out information and content that would increase the likelihood of the child making a decision to reject the mores of Amish culture. Thus, the external protection that allows the Amish to control their own education system leads to the creation of internal restrictions that limit the autonomy of its members. This creates a serious problem for Kymlicka, since if external protection leads to internal restrictions then there is no practical distinction between the two and we

are left with the problem of minority rights often leading to the limitation of individual choice.

The last point that I would like to make concerning Kymlicka's proposed treatment of illiberal national minorities is that it is unclear what protection entails or even why a national minority would want it, if it means that the dominant society can meddle in their affairs (Kukathas, 2002, p. 426). If it is permissive for a liberal society to support cultural rebels, create incentives, and form international standards that marginalize national minorities groups, then it would appear as though protection only means that in most cases liberal societies should not use physical force. But this is a theory of restraint rather than a theory of rights; it is not saying that culture has value and deserves to be protected but rather that physical force is to only be used as a last resort. It is unclear as to why it would be worth the trouble of developing a theory of minority rights that does so little to protect minority cultures.

So far, Kymlicka's attempt to protect illiberal national minority groups while encouraging them to become less liberal has proven to be problematic. Tampering with a culture is not to be taken lightly, as change in one area can cause a chain reaction that ripples through the entire culture. There does not seem to be an easy way around this problem and autonomy liberals must accept that any form of interference runs the risk of undermining protection. Therefore, rather than viewing Kymlicka's theory as one that offers nearly unconditional protection it may be more accurate to consider it as advocating a removal of protection in certain circumstances. This is a promising avenue to explore but before doing so it is necessary to review Kymlicka's proposed treatment of illiberal ethnic minorities.

### **The Protection of Illiberal Ethnic Minorities**

Kymlicka's decision to not grant illiberal ethnic minorities cultural protection because of their willingness to immigrate is a problematic one, with implications extending to the foundation of liberal theory. If we strip away Kymlicka's reasons for not protecting illiberal ethnic minorities we are left with a basic contradiction that needs to be addressed. Not offering protection from whole-scale transitions is the equivalent of requiring certain ethnic minority groups to abandon their culture. If culture is as important to autonomy and the good life as has so far been argued, then not providing that protection is equivalent to severely limiting the possibility of individuals in ethnic minority groups to achieve a good life. To justify this lost opportunity for living a good life Kymlicka would have to demonstrate that whole-scale transitions are not as destructive to the good life as continuing to live in an illiberal culture. Unfortunately, Kymlicka does not provide such a justification and instead focuses on the consent to transition that ethnic minorities give before entering into a liberal society and the desire of most ethnic minority groups to integrate into mainstream society.

Although Kymlicka's claim that ethnic minorities forfeit at least part of their right to cultural protection when they knowingly immigrate to another society may be true, it is doubtful that there are many cases where ethnic minorities fully understand that immigrating to a liberal society would entail the removal of illiberal aspects of their culture and yet still choose to immigrate. It is more likely that either immigrants did not fully comprehend that they would have to give up illiberal practices or that conditions in their country of origin were so oppressive that they had little choice but to immigrate despite the prospect of losing part of their culture.

Many immigrants who come to liberal societies do so precisely because they

believe that they will be able to continue in their current practices. This has been the impetus behind many of the waves of immigration that Canada has seen. Hutterites, Mennonites, Jews, and Doukhobors are prime examples of immigrants who came to Canada because the societies that they were a part of were hostile to their culture. These people immigrated with the assurance that the dominant liberal society would make space for their cultural practices regardless of what they may be. If these groups were told beforehand that there would not be allowances for practices that the dominant culture deemed to be illiberal, then the decision of whether or not to immigrate would have been much more difficult to make. From the perspective of autonomy liberals, it is quite understandable why a group would not want to immigrate to a country that would attempt to transform their culture, as cultural transformations are harmful to autonomy and lessen the possibility of being able to live a good life. It is doubtful that anyone would freely choose to deprive themselves of the good life or to undergo a change that has overall negative implications for living a good life unless the alternatives were truly terrible.

There are some situations where it could be argued that groups did have prior knowledge of the requirement to transition to a liberal culture and yet still chose to immigrate. However, given the harm of transitioning to a new culture, the push factors that cause the migration must be severe. It is therefore reasonable to classify these people as refugees and refugees fall into a gray area somewhere between national and ethnic minorities. Kymlicka concedes the above point and admits that the

“line between involuntary refugees and voluntary immigrants is difficult to draw, especially in a world with massive injustice in the international distribution of resources, and with different levels of respect for human rights...Perhaps then my argument should be limited to what Rawls calls ‘ideal theory’—that is, what would the claims of immigrants be in a just world?” (1995, p. 99).

It is therefore evident that when faced with the reality of an imperfect world, the argument of freely choosing to immigrate becomes too murky to be of use.

Despite the practical shortcomings of Kymlicka's initial reason for not granting illiberal ethnic minority groups protection there remains the reality that many ethnic minorities do not demand the same type of rights as national minorities (Kymlicka, 1995, p. 65). I will not dispute the validity of this claim but rather point out that it fails to be justification for *denying* rights to a group. The fact that a group or individual may choose not to exercise a right is not a reason to refuse to grant it. For example, some individuals may choose to live their lives in isolation and never utilize freedom of peaceful assembly but this does not mean that the right to peaceful assembly should be taken from them. If a right is important, then it should be made available. Therefore, it is best to grant ethnic minorities a full set of minority rights and allow them to choose whether or not to exercise them.

It could be pointed out (Kymlicka, 1995, p. 65) that granting equal rights to all minority groups is not feasible because of the vast number of minorities that would have to be accounted for. Administering hundreds of minority groups within a single nation would be a logistical catastrophe. However, if Kymlicka is right that ethnic minorities, for reasons unbeknownst to us, may choose to sacrifice their chance at the good life in order to become part of a new culture then further assurance can be given for adopting a universal rights approach. Societies can safely provide ethnic minorities with the same degree of protection as national minorities without being concerned about everyone demanding to exercise those rights.

So far I have argued that the existence of illiberal minorities is problematic to a

cohesive theory of minority rights and that this issue requires more attention than what Kymlicka provides. In practice, the complex and interconnected nature of culture makes it difficult or impossible to support the reform of illiberal aspects of a culture while at the same time protecting it from whole-scale transitions. At the same time, the distinction that Kymlicka draws between ethnic and national minorities loses its utility as there does not seem to be a valid reason to deny ethnic minorities the right to the same type of cultural protection as national minorities. This places autonomy liberalism in a precarious position, as it has yet to be shown that it is possible to reach a satisfactory resolution to the dilemma presented by illiberal minorities.

In addressing these issues there are two points that I would like to make that can contribute to a cohesive theory of liberal minority rights. The first is that liberalism and illiberalism occur on a continuum, with a certain degree of illiberalism not only being present but also necessary for the proper functioning of a liberal society. This recognition allows liberals to be more accepting of illiberal cultural aspects that often are seen as a cause for concern; and this in turn greatly reduces the number of cases where a culture is illiberal to the extent that their rights to protection would be called into question. Secondly, I propose that under certain circumstances the harm caused by protecting an illiberal minority culture may outweigh the harm that is caused by whole-scale transitions. When such a situation occurs it will be less harmful to remove protection than to continue to shelter a culture that perpetually harms its members.

### **The Necessary Touch of Illiberalism**

The first point that I would like to make concerning the present discourse on

illiberal minorities is that there seems to be a lack of tolerance for illiberalism. Within autonomy based liberal theory it is presumed that all degrees of illiberalism are theoretically undesirable and it is only begrudgingly that any concessions are made. However, it is interesting to note that some features that are generally associated with illiberalism are actually fundamental components of a liberal society. This observation is made on the heels of chapter two, in which I demonstrated that cultures can be under restrictive, or create too many options and not enough knowledge to understand the available options. What is often needed to create a balanced or adequately restrictive culture is a narrowing of possibilities. This narrowing of possibilities is often viewed with suspicion but it is through seemingly illiberal restrictions that individual autonomy can flourish. Thus, rather than regarding illiberal views that limit options as automatically negative, within certain boundaries it is possible that illiberalism is the mechanism through which an adequately restrictive culture is made possible. Instead of being thought of as something that needs to be wholly prevented, certain illiberal actions should be considered not only permissible but also required of a society that contributes to the flourishing lives of its members. It is only through the restrictions of illiberalism that a culture can reduce the amount of choice to a level that can be considered to be adequately restrictive.

In order for autonomy to be exercised to its fullest and richest extent, culture must function as a restrictor by using 'illiberal' methods. An example of how illiberalism might fill this role can be seen in religious commitments and accompanying norms and values that tend to create a 'thou shalt not' list. These conduct governing rules are warily regarded by liberals and are seen as an infringement of personal liberty. However, it is

through the use of ‘thou shalt not’ that cultures commonly regulate the number of available options. A conservative Mennonite can rule out a broad range of options that are available to larger society. Traditional Mennonite culture will to some extent govern what to drink, wear, say, and do. Despite the apparent limitations mandated by this system there are still a variety of meaningful options that remain available for members to choose between without violating the encompassing norms or values. The culture of a Mennonite society may prohibit an individual from acting violently and thereby restrict their options but it leaves open a number of ways to attempt to peacefully resolve volatile situations. This restriction enables Mennonites to gain a deeper understanding of the options available for nonviolent conflict resolution. Rather than resorting to violence, which may often appear to be the easier or instinctive solution, Mennonites are forced through their restrictions to seek more nuanced answers to life’s difficulties.

The above example emphasizes how the features of cultures that are often labeled as illiberal can function to reduce the number of available options in a meaningful way and thus contribute to creating a context of choice that is not too expansive. This helps form a solution to the problem of protecting illiberal minorities by demonstrating that conflicts occur far less often than anticipated. In the majority of cases what is often seen as an undue restriction of autonomy is actually a properly functioning culture reducing the number of options to a manageable level.

### **The Problem of Extremely Illiberal Minorities**

Despite the necessary touch of illiberalism that is needed for living an autonomous life, there remains the possibility of minority groups being overly illiberal and restrictive. Although it may be both accurate and beneficial for liberals to accept the

need to be at least partially illiberal in order to create an adequately restrictive culture, there will still be circumstances where a society is too illiberal and overly restrictive. The question remains as to what should be done in these circumstances and secondly how to identify when a culture is too illiberal. In the following section I will outline a general guideline that can be used as a template for dealing with overly illiberal minority groups. In keeping with the liberal commitment to autonomy, my argument is based on a utilitarian calculation that encourages the creation of situations that maximize individual autonomy. This methodology permits autonomy liberals to consistently argue for the protection of adequately restrictive cultures while denying protection to illiberal cultures that are overly restrictive.

At a certain point on the spectrum between liberal and illiberal cultures, protecting a culture that is illiberal will cause more harm to autonomy than the whole-scale transition that might take place if the protections were removed and the culture became more liberal. This is obviously not an ideal situation, as by either protecting or by removing protection the ability to exercise autonomy will be compromised. However, in these circumstances it is the duty of a liberal society to ensure that the least harm is done.

To help clarify why in certain circumstances protection should be removed from illiberal minorities we can look more closely at the options that are available to the overarching liberal society. The first option is to provide unconditional protection that does not consider how illiberal a minority culture is. In this situation, the culture will be protected regardless of how drastically its members are restricted. In most cases this will work out well, as the majority of minority cultures are adequately restrictive. However,

there will also be instances where a culture is too illiberal and severely decreases the opportunities that its members have at achieving a good life, as there are not enough options available to exercise autonomy. If a liberal society were to protect these cultures from transitions then they would be helping to perpetuate a cycle that will continue to make it less likely for individuals to experience a good life. It is important to note that if the protection that is provided is successful the harm will continue for an indefinite amount of time.

The second option that is available to a liberal society is to provide partial protection. This is essentially what Kymlicka attempted to accomplish by providing national minorities with protection while at the same time actively encouraging them to abandon illiberal practices. If this option were feasible it would provide an ideal solution, as a culture could continue to provide a context of choice while simultaneously shedding the features that were harmful to individual autonomy. However, as has been previously pointed out it seems impossible to surgically remove illiberal aspects of society while at the same time protecting a culture against whole-scale transitions; the interconnected nature of culture makes a policy of minor intervention the potential equivalent of not protecting a culture at all.

The final and most philosophically consistent option is to remove protection from overly illiberal minority cultures. The downside of this approach is that the removal of protection will expose minority cultures to the influence of the dominant society and potentially lead to whole-scale transitions. As has been shown in chapter two, whole-scale transitions have a negative impact on individual autonomy and should generally be avoided. It is important to note at this point that despite the undesirability of whole-scale

transitions, they are only harmful for a set amount of time. Once a transition is complete individuals can have the same chance at living a good life as those who are already living in the culture that they transitioned to. Therefore, when given the choice between either supporting a perpetual cycle of harm or removing protection and allowing the temporary harm that transitions bring, it becomes clear that in some cases a removal of protection will be preferable as it produces less harm in the long term.

### **A Case Study**

So far this chapter has searched for a general guideline on how a liberal society should react to illiberal minority cultures. This has led to the conclusion that each case must be weighed on an individual basis to ascertain whether more harm to autonomy will be caused by protecting the minority culture in question or by removing protection and risking a whole-scale transition. To help demonstrate how a liberal society might go about evaluating a given situation we will now turn to the case of Lester Desjarlais.

In 1992, at the age of 13, Desjarlais committed suicide at the Sandy Bay Ojibway Reserve in Manitoba, after a history of sexual and physical abuse at the hands of a series of foster parents. In the aftermath of this incident, aboriginal feminist groups strongly and successfully advocated federal government intervention into the administration of aboriginal child welfare agencies, who had mishandled the Desjarlais case and others like it. These women were concerned that Ojibway political leaders had conspired with members of the Manitoba provincial government to keep the matter secret and hence exempt from public scrutiny. They also charged that male aboriginal leaders had attempted to silence aboriginal feminists who had initiated the inquiry (McDonough, 2003, p. 365).

This is a tragic example of how protection of a minority group can lead to a dramatic violation of individual rights. In this case the right of Aboriginal people to govern their

own child protection system is called into question because Lester Desjarlais' right to autonomy had been seriously compromised, as "nothing violates a person's rights so much as the fact of being driven to suicide by pervasive abuse" (McDonough, 2003, p. 366).

This case is particularly interesting because it does not clearly fall into the category of what Kymlicka would consider to be a grossly illiberal society (1995, p. 18) but rather occupies a space somewhere on the illiberal side of the spectrum. This ambiguity is characteristic of the complexity that is inherent in analyzing cultures and demonstrates that determining the appropriate action is a challenging exercise. Is the violation of Lester Desjarlais' rights indicative of a culture that is illiberal to the point where protection should be removed? I will argue that Lester Desjarlais' case in itself is not enough to be concerned about underlying illiberalism but if it is not an isolated occurrence, there is significant reason to question the culture.

If what happened to Lester Desjarlais is an isolated incident it would be very difficult to draw sweeping conclusions concerning the culture that raised him. Though devastating, abuse and neglect are present to some degree in many cultures that are sufficiently liberal. In order to take action there needs to be ample evidence showing that the harm of a possible whole-scale transition is worth the benefit of moving towards a more liberal society. Therefore, the benefit of the culture that would be transitioned towards needs to have a substantial advantage over the previous culture. In this case it would mean that abuse and neglect would need to occur at a far greater rate in an Aboriginal childcare system than in the regular system of the dominant liberal society.

In practice, if it could be shown that there is substantially less abuse in the

dominant liberal society's system than a removal of cultural protection may be justified. In this case, the removal of cultural protection would potentially involve the Federal and Provincial Governments as well as outside organizations taking a more active role in ensuring that Aboriginal children are placed in secure and nurturing environments. The implications of such an arrangement are difficult to ascertain as the interconnected and complex nature of culture means that a whole-scale transition for the individuals affected is a likely outcome. However, it is certainly less harmful for individuals to transition to a new culture than it is to suffer the neglect and abuse that may lead to suicide.

### **Concluding Thoughts**

The question of whether to protect illiberal minorities is a potentially problematic issue for autonomy liberals. However, through a careful laying out of the relevant factors it is possible to evaluate a given situation using a consistent maxim. Namely, the primacy of autonomy should be utilized by liberals to determine whether or not illiberal minorities should be protected. In cases where there is a touch of illiberalism, protection should continue to be offered since such societies are conducive to autonomy. On the other hand protection should be removed from cultures that are overly illiberal, as in these circumstances it is a lesser evil to deny a group protection than to indefinitely disadvantage individuals. Although these evaluation tools offer a principled way through which to decide on appropriate action there is admittedly a need for considerable judgment as to where a culture lies on the spectrum between liberal and illiberal. The next chapter will outline how a liberal society might

proceed to determine where on the spectrum a particular culture lies and whether or not a specific protection should be granted.

## Chapter Four

### Aboriginal Education

In the previous three chapters I have traced Kymlicka's theory of liberal minority rights from its foundation in autonomy through to its treatment of illiberal minority groups. Throughout this analysis certain aspects of Kymlicka's theory have proven to be inadequate, yet the general structure and overall project of justifying minority rights through a liberal framework has been shown to have considerable merit and remains intact. The shortcomings of Kymlicka's theory have been overcome through adaptations that, I believe, place a theory of liberal minority rights in a stronger position.

The goal of this chapter will be to help clarify how a liberal theory of minority rights might look when faced with the complex reality of an existent culture. In order to illustrate how the theory presented so far functions in such a situation, I will address the question of whether the Aboriginal people of Canada<sup>6</sup> should have the right to administer their own formal educational system. The intention behind evaluating whether or not Aboriginal people should have control over their educational system is not meant to act as a comprehensive study but rather as a rough guide to expand upon in the future. The issue of Aboriginal education has been chosen for several reasons; Aboriginal control of

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<sup>6</sup> A conversation about Aboriginal culture in Canada is misleading, as 'Aboriginal culture' is somewhat of a misnomer. Within Canada there are five hundred and seventy-seven bands with over thirty languages spoken (Barman, Hébert and McCaskill, vol 1, 1986, p. 1). Evidently, there are several distinct cultures within this milieu that deserve to be treated as individual entities. However, due to the commonality of falling under the jurisdiction of a similar colonial power, all of these groups have undergone roughly similar transitions in the past four hundred years. Though there are certainly exceptions to the generalizations that can be made about these experiences, the loss of traditional culture and the question of assimilation is nearly universal to all of those who identify as Aboriginal. Working with these generalizations will allow a framework to be constructed that can later be adapted to those groups who do not share the experiences that are referred to.

formal schooling has been a highly contentious topic throughout the last four decades, making it highly relevant. Secondly, this topic is sufficiently complex to demonstrate the difficulty involved with bridging the gap between theory and practice and the necessary concessions that need to be made. Lastly, control of education is a clear example of a type of protection that can be offered to minority groups to ensure cultural survival.

### **A Summary of Adequately Restrictive Minority Rights**

Before moving on to analyze the case study, it will be beneficial to briefly review the conclusions that can thus far be drawn from the previous three chapters. So far these conclusions have been presented in isolation and it has not yet been shown how they work together when placed into a single cohesive theory. In order to add clarity to the following discussion and differentiate between the theory that has now arisen from Kymlicka's work and Kymlicka's original theory, I will refer to the new theory as one of adequately restrictive minority rights. The term adequately restrictive is an appropriate descriptor as it refers to the need of an autonomy fostering culture to be neither under restrictive in the sense of not narrowing options enough or overly restrictive in the sense of being too illiberal.

The foundation of a theory of adequate restrictiveness is based upon the value of autonomy as a means through which to garner endorsement. Individual endorsement is necessary in the pursuit of the good life, as without endorsement it would be difficult to engage in projects in a meaningful way. It is important to note that for something to be truly endorsed there needs to be options available to choose between and considerable knowledge of what these options entail. The vehicle that makes autonomy possible for people is culture as it creates options and gives us the tools through which to make

informed decisions. While culture in general provides a basic requirement for a good life, not all cultures contribute to autonomy equally. Some cultures are overly restrictive and inhibit choice from taking place while others are overly permissive and provide little guidance as to which options will lead to a good life.

As a liberal society, these findings weigh heavily on Canada's treatment of minority groups. In keeping with the liberal value of justice, individuals should have the right to pursue a good life and have a reasonable chance of achieving it. To knowingly restrict a person's likelihood of achieving a good life is to deprive them of one of the most fundamental aspects of being human. As such, it is the duty of liberal societies to ensure that its members have the basic tools through which to construct a good life. This means that liberal societies should actively promote the creation and maintenance of adequately restrictive cultures, while preventing situations where under and over restrictive cultures form.

For minority groups, adequate restrictiveness has two implications, on the one hand their cultures are potentially protected from transitions that could lead to over or under restrictiveness. On the other hand, cultures are subjected to scrutiny that may reveal an over or under restrictive culture. If the minority culture fails to meet the criteria of being adequately restrictive then the right to protection could be overridden by the need to ensure that individuals have access to an adequately restrictive culture.

Despite the argument presented so far it is unclear whether a theory of adequate restrictiveness is of practical use. Is it possible to determine whether a culture is over or under restrictive? How can we gauge when a culture is creating such a disadvantage to its members that it should be phased out or reformed in favour of a culture that is more

conducive to the pursuit of the good life? There are no simple answers to these questions and they must be addressed on a case-to-case basis. However, what I will attempt to do for the remainder of this chapter is provide a case study that demonstrates how a theory of adequate restrictiveness can have practical implications for present issues. As such, the subject of Aboriginal education will be utilized to provide a template for how one may go about evaluating whether cultural protection is justified or not. Ultimately this entails asking whether education under Aboriginal leadership is contributing towards an adequately restrictive culture or whether it is helping to perpetuate under or over restrictiveness. This is a difficult task to accomplish, as there are varying goals that Aboriginal people may have for their education system with some potentially contributing towards adequate restrictiveness and others possibly hindering it. If the goals of Aboriginal people include working towards adequate restrictiveness then the right to control their own education system should be acknowledged. However, if the educational ends of Aboriginal people are hostile towards the fostering of an adequately restrictive culture then there seems to be little reason, from the perspective of this theory, to provide protection.

To simplify the daunting endeavor of evaluating educational ends it will be helpful to consider four divergent goals that are commonly associated with Aboriginal education and evaluate which of them would contribute to an adequately restrictive culture. The first of these goals is to perpetuate Aboriginal culture in its current state, the second is to return to a previous cultural state, the third is to speed assimilation into the dominant society and the fourth is to foster the creation of a new Aboriginal culture. Although there is considerable overlap between these broad concepts, there are

fundamental differences between them that greatly affect whether or not the end goal fosters an adequately restrictive culture. In the next part of this chapter I will analyze each of the four different goals in turn to determine whether they contribute to adequate restrictiveness and deserve protection or lead towards a state of under or over restrictiveness that does not entail an obligation for protection.

### **Perpetuating Current Aboriginal Culture**

To determine whether a school system that perpetuates the present Aboriginal culture is beneficial to autonomy we can ask whether the present culture is under or over restrictive as this is the culture that would be more or less replicated. It has been previously argued that the ability to exercise autonomy has direct implications on the possibility of leading a good life. As such, determining whether a culture is conducive to autonomy can also be accomplished by evaluating the success of various members of a society at pursuing a good life. This is somewhat easier to evaluate than autonomy because success and/or failure to lead a good life has attracted a great deal of scholarship both from outside and inside the Aboriginal community. However, due to the colonial history that has dominated the relationship between Aboriginal people and broader Canadian society, evaluating the success of Aboriginal people at pursuing the good life is a sensitive and thorny process. Additionally, one must recognize that inherent in any evaluation of another culture is one's own cultural bias that hinders any claim of objectivity. Despite these hurdles, evaluating the degree of success that individuals in a culture have in pursuing the good life is not futile. The process of evaluation is greatly aided by people within the culture itself. If the people in a minority culture are not

flourishing they will most likely make their plight known.<sup>7</sup> When combined with third party evaluations a fairly well rounded conception of a culture's current state can be ascertained.

In Canada there has been an outcry by Aboriginal people who are desperately attempting to draw attention to the fact that many among them are not flourishing. As Andrea Bear Nicholas has pointed out Native people often end up "living in poverty, in prison, or as suicide statistics, all at disproportionately higher rates than non-Natives" (2001, p. 10). Likewise, outsiders mimic similar sentiments that "poverty, infant mortality, unemployment, morbidity, suicide, criminal detention, children on welfare, women victims of abuse, child prostitution, are all much higher among Aboriginal people than in any other sector of Canadian society" (United Nations, 2004, p. 2). The statistics to back these claims are staggering and leave little doubt that the quality of life experienced by Aboriginal people in Canada is substantially less than the Canadian average. Furthermore, images of poverty, suicide, and prison do not sit well with conceptions of a good life and should not be supported or protected by a liberal society. It is evident that people who are living in such conditions are not engaged in the good life to the same extent as others within broader society.

The fact that Aboriginal people as a whole are not flourishing means that further investigation is needed to determine the underlying causes. Is it a lack of resources? An oppressive political regime? Cultural factors? Or any number of other considerations? Once again the fairest and most accurate way of understanding the situation is to look to

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<sup>7</sup> This will be the case in situations where free speech is allowed but it is possible to envision certain cultures that would be so restrictive that any internal outcry would be stifled. However, in these situations, as blunt as it may be, the tool of reason as possessed by an outsider should be capable of detecting gross over-restrictiveness.

the people themselves. As Taiaiake Alfred boldly states, the real reason that Aboriginal people

endure unhappy and unhealthy lives has nothing to do with governmental powers<sup>8</sup> or money. The lack of these things only contributes to making a bad situation worse. The root of the problem is that we are living through a spiritual crisis, a time of darkness that descended on our people when we became disconnected from our lands and from our traditional ways of life<sup>9</sup>. We are divided amongst ourselves and confused in our minds about who we are and what kind of life we should be living (2005, p. 31).

In a similar vein, Nicholas confirms that the reason for difficulties in Aboriginal communities lies in the “fact that fewer and fewer Native children today know their culture and language” (2001, p. 10). It is clear from the above statements that the root of the problem is closely tied to cultural factors. This revelation is hardly surprising as cultural rights have been at the heart of Aboriginal demands for well over four decades.

Having determined that culture is likely a major contributing factor to the lack of Aboriginal flourishing, we can now move on to ask why many Aboriginal cultures might be failing. Is it because they are over restrictive, or because they are under restrictive? In the following argument I hope to demonstrate that in its current state, Aboriginal culture can be classified as under restrictive. As such, it provides Aboriginal people with too many options and not enough knowledge of what these options entail.

To further illustrate the current under restrictive nature of Aboriginal culture it is necessary to consider how under restrictiveness manifests itself in specific aspects of a culture. This will strengthen the position that Aboriginal culture is currently under restrictive by demonstrating in a more detailed manner the role that culture plays in

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<sup>8</sup> Although the fact that many Aboriginal people are failing to lead a good life is not immediately the fault of governmental powers, this does not exempt the government from responsibility for its original involvement in creating the present situation, and certainly does not preclude them from being part of the solution.

<sup>9</sup> In other sources Alfred uses culture and ‘traditional ways of life’ interchangeably.

restricting options. More importantly, it will help establish a general conception of how a case can be more thoroughly evaluated. I would once again like to stress that this review is not meant to provide a comprehensive argument for or against Aboriginal education but rather act as an example of how a theory of adequate restrictiveness may be used. As such, language, shared history, norms, values and institutions will be considered in turn.

The Aboriginal languages of Canada were developed and have evolved over thousands of years to provide a framework for the life that Aboriginal people had traditionally led. With the coming of Europeans and the changes to the available options that followed, Aboriginal languages have been faced with the impossible task of keeping pace with a rapidly changing way of life. The imbedded worldview that is present in traditional Aboriginal languages cannot adapt to the ever-expanding number of available options. The difference between hedge and mutual funds is difficult to explain in languages that served societies that did not have a European monetary system<sup>10</sup>. Likewise, European languages fail to offer insight into how to live a life that is not European. The bias present in languages that were developed by European colonizers cannot provide Aboriginal people with an adequate understanding of their present situation. Thus, neither language is adapted to the way of life that Aboriginal people are currently leading.

An adequately restrictive shared history provides people with a concept of how they are to live by giving them the knowledge of what each option entails. Key to the

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<sup>10</sup> It can be pointed out that several ancient languages, such as Hebrew, have managed to survive and adapt to the demands of modern economics, technology, etc. However, these languages have evolved over long periods of time as they were exposed to somewhat gradual changes. On the other hand, the languages of colonized indigenous people have very little time to undergo the radical changes that are needed to flourish in rapidly changing societies.

success of a shared history in aiding the pursuit of a good life is that the history sheds light on the present available options and thereby creates the conditions necessary for the exercise of individual autonomy. The shared history of Aboriginal people cannot successfully contribute to making decisions about the good life because of the rapid changes that have taken place. Colonization has left them in a position where their remote history struggles to maintain relevance and their recent history is rife with oppression that makes it difficult to ascertain a future. Traditionally, shared history would inform a person as to the advantages and disadvantages of certain options that were specific to living a life within that culture. However, European contact disrupted this balance by adding a plethora of new options. The speed at which these new options were added produced an influx of choice and gave little time for knowledge to accumulate as a shared history. Within a matter of generations Aboriginal people were propelled from their traditional way of life into a culture that was entirely foreign. On what basis can one decide whether it is better to be a farmer or a trapper? A lawyer or a truck driver? Without the frame of reference that an adequately restrictive shared history provides, individuals are trapped in a situation with too many options and little knowledge of what these options mean.

The current norms and values of Aboriginal culture are not sufficiently restrictive to enable genuine autonomy. Members of Aboriginal groups are caught in a culture that is struggling to rectify the norms and values of their traditional culture on the one hand and European culture on the other. This expansion of norms and values creates an explosion of acceptable behaviour as well as codes of inappropriate action. It is no longer clear to which set of norms and values one's allegiance should lie. The tension

that this cultural collision creates, dramatically increases the number of choices that one must make. Whereas a person from an adequately restrictive cultural structure has a basic framework from which to explore the world, Aboriginal youth are born into a tug-of-war between two cultures. Rather than having a default set of norms and values from which to rely on, they are faced with the continual question of what to do and how to make decisions about the world around them.

Similarly, the variety of institutions present in Aboriginal culture creates a crippling array of options. These institutions have a hodge podge of mandates that often conflict with each other and create multiple versions of the same roles. Hospitals and nursing clinics offer a vast array of jobs and a particular worldview of health and the human body that relies on modes of empirical reasoning to treat illness. Simultaneously, the role of health care provider is duplicated by traditional healers. Aboriginal youth who are interested in pursuing a career as a health care professional need to decide which aspects of each of these two worldviews to adopt. Similarly, Aboriginal people who find themselves ill must make difficult decisions as to how they wish to be treated. The overlap of two complex systems that already offer vast amounts of choice makes the situation overwhelming for those who must attempt to understand both. This overlap of roles created by competing institutions leads to an expansion of the options available, which in turn leads to an erosion of the value of choice as it becomes increasingly difficult to ascertain how each option might lead to a good life.

The effect that an under restrictive culture has on Aboriginal people is not simply a theoretical framework, it is the lived experience of thousands of individuals who are caught in the whirlwind. Several years ago I took part in a mentorship program for ‘at

risk' students. During this time I had the privilege of becoming a close friend with Bruce (pseudonym). Bruce's story follows the pattern that was set out for him by an under restrictive culture. Raised in a community in northern Manitoba, Bruce decided to move to Winnipeg and live with his aunt. By the standards of the dominant society, she was a successful woman and a model of fortitude in the face of difficulties. Having been put through the hardship of the residential school system, she struggled on to attend university and become a registered nurse. Not only did she use her skills as a mode of improving her own situation, she also gave back to northern communities by working on a traveling rotation. Her partner was also an excellent role model. He worked at a professional job and was an advocate for social justice in Aboriginal communities. Bruce moved into their condo in an affluent neighborhood and quickly settled into routine at a top public school. His teachers and new friends encouraged him to fit in, join the basketball team, ask a girl out, go to church, and submit applications to challenging university programs.

But there was another force at work. There was a Bruce that caught pickerel, dreamed of snaring a lynx, and heard spirits rustle in the dark of a sweat lodge. A Bruce that saw the world through stories whispered in Cree around campfires; stories so profound that he could not translate them. We would sit for hours swapping tales of past hunts and the difficulties of catching foxes. He would lament the loss of wildlife habitat caused by a Hydro dam while sipping a coffee under the glare of a Tim Horton's sign. What to do? How to choose a, Career? School? Home? Morals? With all of the options that were available to him, Bruce was overwhelmed. He did not have the tools to decide which path to walk. Bruce wandered to jail.

The story about Bruce is meant to illustrate the upshot of the preceding discussion about issues of restrictiveness – in particular, about the need for a certain measure of restrictiveness in order to enable Aboriginal children to develop a set of capacities that will enable them, ultimately, to evaluate a less restrictive and more expansive range of cultural options. However, in its present form it is sufficient to say that Aboriginal culture seems to be under restrictive. If this is the case then protecting an educational institution that is perpetuating the current culture would be unacceptable as the present culture is not adequately restrictive and is hindering individuals' pursuit of a good life. Following from this we can now reject the first proposed goal of perpetuating current Aboriginal culture and move onto the second possible goal for Aboriginal education.

### **Assimilation into another Culture**

A second possibility for Aboriginal education is to focus on transitioning students from the present under restrictive culture into another already established one that is adequately restrictive. Despite the harm that would occur as Aboriginal people experience yet another whole-scale transition, this option seems preferable to maintaining the current state of under restrictiveness, as it is a temporary rather than permanent harm. However, although this option may theoretically appear to be superior there seems to be substantial evidence in this particular situation to construct a convincing argument as to why assimilation is not a valid alternative. The history of Aboriginal people in Canada is rife with experiences of failed attempts at assimilation that have had catastrophic impact on the lives of individuals. Stemming from this history, many Aboriginal people have an ingrained and justified suspicion of assimilation. To gain a better understanding of the

historical reasons for ruling out assimilation as a mode of obtaining an adequately restrictive culture it will be helpful to briefly review past attempts at assimilating Aboriginal people into the dominant society.

Aboriginal people's experience with policies of assimilation extends back to shortly after contact with Europeans. As 'explorers' pushed their way Westward across Canada they were closely followed by missionaries who began setting up day schools in the 17<sup>th</sup> century with the express purpose of transforming Aboriginal culture (Friesen, 2002). These schools proved to be unsuccessful and it became apparent that "we (Jesuits) could not retain the little Savages, if they be not removed from their native country, or if they have not some companions who help them" (Thwaites, 1959, p. 87-88). The difficulty of keeping children of a primarily nomadic people in school proved too great of an obstacle for early missionaries and new techniques were needed if Aboriginal people were to be effectively Christianized. It was concluded that it would be more efficient to remove Aboriginal children from their parents than to convince Aboriginal people to abandon their way of life in favour of settling down in a single location. The first attempts to remove children from their families took the form of sending an elite number of children to France to become 'civilized' (Barman, Hébert and McCaskill, vol 1, 1986, p. 50). The cost restrictions of this practice forced a strategic selection of youth who the missionaries believed would return to become influential members of their communities, but these attempts were met with limited success and were abandoned in favour of residential schools that could be located in Canada and reach a broader number of children. Despite the change in implementation, the underlying intention remained, with the primary goal of "isolating children from their parents and the influence of the

reserve” (Kirkness, 1992, p. 7). In the tradition of its predecessors, the residential school system failed to assimilate or integrate Aboriginal people into dominant society.

There is a possibility that if the residential system had continued to operate, all remnants of traditional Aboriginal culture would have perished. However, this was not to be, as the ideology behind residential schools, as well as the method through which they operated, has been judged as morally reprehensible due to the severe harm caused. The closure of residential schools marked the end of an era but the assimilationist policy continued. Following the Hawthorn Report of 1967 that blamed 97 percent student dropout rates on cultural differences, (Nicholas, 2001, p. 15) the Federal Government renewed the campaign of assimilation and drafted a White Paper in 1969 that clearly outlined their intentions to integrate Aboriginal people into mainstream society. As a response to this document and the continued assimilation based policies, Aboriginal groups united to create the Indian Control of Indian Education position paper in which they outlined their opposition to assimilation.

Although pressure from Aboriginal groups eventually culminated in the scrapping of the White Paper and the adoption by the Federal Government of the Indian Control of Indian Education position paper, there remains lingering distrust between Aboriginal groups and the Federal Government and a well-founded suspicion of the effectiveness of assimilation policies. This distrust and suspicion makes it likely that any future attempt at assimilation will be met with resistance from Aboriginal people and if history is any indication, will end up in failure and prolong the current under restrictive culture. It is therefore necessary to explore other possible educational goals.

### **Resurrecting a Previous Culture**

When conversations concerning Aboriginal control of education arise there is often an underlying assumption made by the dominant society that Aboriginal people want to use education as a tool to resurrect a previous adequately restrictive culture. However, this is a dubious end as it is impossible to return to a previous cultural state. The external and internal forces that shape a culture will never again replicate those that once were and this severely inhibits the ability to resurrect a culture that has all but disappeared. This issue has been addressed by several Aboriginal scholars who acknowledge that a return to a prior cultural state would be neither beneficial nor possible. Fyre Graveline points out that “traditional in the modern context does not mean that Aboriginal people will return, or are able to return, to a way of life embodied by our Ancestors” (1998, p. 21). Furthermore, “today’s Indian cultures are not traditional aboriginal cultures” and they “are not returning to a previous era; rather they are affirming their identity by selecting aspects of the old ways and blending them with the new” (Barman, Hébert, and McCaskill, 1987, vol 2, p. 4-5).

Despite the evidence against the possibility of resurrecting a previous culture it could be argued that the project is possible even if it will not result in an exact duplicate copy. It might be manageable to create a rough image of the previous culture while eschewing the idea of borrowing some cultural aspects from the dominant society. However, if such an effort were to reach fruition it is bound to fail for several practical reasons. To name a few essential factors that would contribute to failure; there is a colonial history that has created and perpetuated a cycle of dependence (Nicholas, 2001), discriminatory laws that hamper development (Brady, 1995), and logistical issues that stem from a relatively small population, isolation and diversity among groups. In

addition to these challenges there remains a dominant society that offers an enticing alternative for individuals.

Laws and the psychological effects of colonization are capable of hindering the resurrection of a past culture for somewhat obvious reasons. However, these problems are also arguably solvable through changing laws and working on overcoming the psychological harm of colonization. As such, we will limit our discussion to physical challenges that are irresolvable. A relatively small population, isolation and diversity among groups make it difficult to form unifying ties among Aboriginal people. In comparison to the Māori of Aotearoa, who have been making strides towards resurrecting certain aspects of their culture (Penetito, 2002), the Aboriginal people of Canada are beset by serious obstacles. While the Māori consist of fifteen percent of the overall population of the country, the Aboriginal population of Canada consists of only four percent (Statistics Canada, 2006). Accordingly the density of Indigenous people in Canada compared to the overall landmass is much sparser. This distance makes it physically difficult to interact and form critical mass. Distance also creates complications for discussions of nationhood, as there are no distinct geographical boundaries. There is also the issue of diversity to take into account; while the Māori share a common language the Aboriginal people of Canada have over thirty (Barman, Hébert and McCaskill, vol 1, 1986, p. 1). Not only is it more convenient to engage in the world of dominant society that surrounds and overwhelms Aboriginal communities, but even when there is intertribal communications they are often conducted in the language of the colonizer as this is the only language that most Aboriginal groups hold in common. The implications of these factors are immense; as under no circumstances is cultural resurrection easy and

additional obstacles only serve to make the situation worse.

The issues of small population, isolation and diversity are further heightened by the pervasiveness of the dominant culture that continually works to undermine efforts of cultural resurrection. Tools of domination reach into every corner of life. Televisions preach mainstream values and normalize the usage of the English as the language of choice. Billboards and commercials promise happiness for joining the ranks of a capitalistic monetary system and stores deliver the goods and services that are required for living a western style life. In the face of these billion dollar industries the hope of isolated pockets of Aboriginal people being able to resurrect a previous adequately restrictive culture seems to be very slim.

Given the impossibility of returning to a past culture and the difficulty of creating an approximate copy, if Aboriginal people were to use resurrection of a past culture as a goal for their educational system it is likely that it would end up failing. However, the effort that would have been spent in attempting to return to a past culture would create substantial resistance to assimilation and prolong the period of time spent in an under restrictive cultural structure. Therefore, the goal of resurrecting a past culture is not only misguided but it is also likely to be harmful to the individuals within the culture.

### **Creating a New Adequately Restrictive Culture**

The above argument makes clear that resurrecting a past culture is not a valid option for Aboriginal people and as such should not be used as the ultimate end or goal of Aboriginal education. However, arising from the comments of the Aboriginal scholars mentioned in the previous section is another alternative end for education. Rather than a simple return to the past it is possible to engage in a much more nuanced project of

creating an entirely new adequately restrictive culture that is composed of elements from several other cultures. An essential difference between the creation of a new culture and the transition to another one is that cultural creation is a slow process that avoids many of the pitfalls associated with whole-scale transitions. While whole-scale transitions entail a rapid expansion of options that outpaces the development of knowledge of what the options entail, the creation of a new culture involves a more gradual introduction of new options, which allows knowledge to accumulate.

Key to a gradual introduction of new options is a sense of continuity with the previous culture, as this allows knowledge to slowly be built up by utilizing the vast reservoirs of a culture's history. When this is taken into consideration it is likely that the best way for Aboriginal people to create a new adequately restrictive culture may be to heavily rely on their past and present cultures. The implications of this stance are that Aboriginal people do not need to be traditional purists.

“Continuity with tradition is neither a rejection of the artifacts of other cultures nor an attempt to ‘turn back the clock.’ Asking Natives to eschew automobiles, television, and bank accounts in the name of ‘preserving their culture’ makes as much sense as asking whites to give up gunpowder because it was invented by the Chinese or the zero because it was invented by Arabs. It is the continuity of a living culture that is important to Indian education, not the preservation of a frozen museum specimen” (Hampton, 1995, p. 29).

It is therefore possible for Aboriginal people to utilize their past culture as a starting point for the creation of a new adequately restrictive culture. The feasibility of this option and its ability to work towards an adequately restrictive culture without whole-scale transitions makes it attractive as an educational end.

So far in this chapter I have attempted to lay out a template that demonstrates how a theory of adequate restrictiveness might be applied to the issue of Aboriginal control of

education. In doing so I pointed out that the right to control an educational system is contingent on whether or not the system will contribute to an adequately restrictive culture. As such, I have explored four possible cultural goals that are commonly associated with Aboriginal control of education. Perpetuating the current culture, assimilating into the dominant culture, and resurrecting a previous culture have all been shown to lead towards cultures that are not adequately restrictive. If Aboriginal people were to choose to hold any of these ends as a primary goal of education then there would be reason to seriously doubt whether Aboriginal control of education would be of benefit to the individuals within the culture. On the other hand, creating a new adequately restrictive culture that is based upon the past has been shown to have considerable potential and few drawbacks. If Aboriginal people were to hold this final option as an end to education then there is considerable weight behind their claim to control their own educational system. What remains to be ascertained is which educational end Aboriginal people wish to pursue.

### **Current Aboriginal Ends to Education**

Over the past four decades Aboriginal people have become vocal about the ends of education and the central role that they play in cultural formation. The first unified manifestation of this awakening came as a response to the assimilationist undertones of the White Paper of 1969 that threatened to remove the special identity of Aboriginal people and phase out Federal responsibility for education. The forthcoming inundation of protests from various Aboriginal organizations that decried these policies left little doubt as to the importance that Aboriginal people placed on the education of their

children and laid out a foundation of what the purpose of education should be.

Inarguably the most influential of these counter position statements was the “Indian Control of Indian Education” position paper which demanded not only a continuation of Federal responsibility but also local governance of education. The “Indian Control of Indian Education” paper outlined a series of goals for education that are as follows:

In Indian tradition each adult is personally responsible for each child, to see that he learns all he needs to know in order to live a good life. As our fathers had a clear idea of what made a good man and a good life in their society, so we modern Indians, want our children to learn that happiness and satisfaction come from:

- pride in one’s self
- understanding one’s fellowmen, and,
- living in harmony with nature.

(NIB, 1973, p. 1)

and furthermore,

we believe in education:

- as a preparation for total living,
- as a means of free choice of where to live and work,
- as a means of enabling us to participate fully in our own social, economic, political and educational advancement.

(NIB, 1973, p. 3)

It is evident from the above statements that the initial push for Aboriginal control of education did not intend for education to perpetuate the current culture in which many of the outlined goals are not being achieved. It also goes without saying that the goal of Aboriginal control of education was not to assimilate into dominant society. In addition, there are undertones that run throughout this statement that demonstrate an understanding that resurrecting a past culture is impossible, yet there is reference to building off the knowledge of the past. Based on the above statements it is likely that Aboriginal control of education was founded with the intention of creating a new culture where individuals have free choice and the ability to revise their personal projects. In order to develop this

new culture, it appears as though Aboriginal educators intended to borrow heavily from the past but also incorporate beneficial aspects of other societies that they have encountered. If this is the case, then the project of Aboriginal control of education deserves to be supported by the broader liberal society.

### **Concluding Thoughts**

The issue of Aboriginal control of their own education system has created considerable stir in Canada over the last forty years. Despite the length of this debate an underlying tension between the Federal Government and Aboriginal groups persists. As was pointed out at the beginning of chapter one, a contributing factor to this friction is created by an unease between liberal policies that value the individual right to autonomy and cultural group rights that are often perceived as being hostile to autonomy. However, as I have demonstrated throughout this thesis there is no need to view the right to autonomy and cultural rights as noncompossible. In the case of Aboriginal education in Canada, it is evident that a liberal society can and should offer protection to allow Aboriginal people the ability to control their own education system. In effect this form of cultural protection would help create an adequately restrictive culture which would in turn lead to a greater opportunity for individuals to exercise autonomy and pursue a good life. Therefore, rather than viewing group rights and autonomy as opposed to each other it would be more accurate and beneficial to realize that in some cases they are mutually dependent. Given the arguments presented in this paper, it is time to rethink autonomy and restrictions and the fundamental role they play in enabling a liberal defense of minority rights.

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