

Pondering whether the political process in a nation should be democratic, we have so far ignored a prior question: why should these people on this particular territory be ruled under a single state? A state claims the authority to rule over the people on its territory, and also the authority to maintain its territorial integrity. States police their borders, exercising control as to who may enter and exit. A full justification of the political authority of states would include justification of these claims.

Just to raise these questions may seem like an exercise in bad utopianism. What is the practical relevance of such questions? But a normative political theory should both affirm an ideal and also include practical guidelines about what is best to do in given circumstances. The two will interact. Even if there is no chance of abolishing slavery in present circumstances, the fact that slavery is unjust may well shape the right answer to questions about what the slave Uncle Tom ought to do or is morally entitled to do here and now.

In principle, the instrumental or best results theory determines the right division of people into states. Political borders should be set and people attached to political jurisdictions in whatever way would produce best results.

If we hold that it is above all morally important that every state be democratically governed, we might hold that political jurisdictions should be set so that people are divided into nation states in such a way that each state can fulfill the democratic ideal.

Another approach draws from the Hart-Rawls Principle of Fair Play. If a state is effectively organized and operates with tolerable efficiency to supply the important public goods of security and protection of basic rights in a fair way for all inhabitants of the territory it claims to rule, the state has a right to maintain itself and preserve its territorial integrity. Allen Buchanan in "Theories of Secession" comes close to this position except that his view also includes an historical requirement: A state that conquers another or annexes its territory must allow the people on the wrongly acquired territory the right to secede if they choose.

Suppose that within an existing country, a group of people claims the right to sever their connection from this state and to form an independent nation state taking some territory away from the jurisdiction of the state that now rules them. In the usual case the people who voice such a demand will be geographically concentrated in some region of the existing nation and will claim that the land they now inhabit should exit with them and form the territory of the new independent nation.

For a current example, we might imagine the Kurds in Iraq and Turkey demanding the right to secede and form their own independent nation on the portion of former Turkey and Iraq mainly inhabited by Kurds. What considerations determine whether such a demand would be justified?

Allen Buchanan distinguishes two types of moral theories of secession—primary right theories and remedial right only theories. The former hold that an appropriate group of people (that satisfies the criteria for being a potential nation) has a basic right to secede provided the costs of dividing the existing nation that would fall on those left behind in the rump nation are fairly shared among secessionists and those left behind. That is, the serious and stable choice to secede entitles the group to secede, given the qualifications just stated.

Remedial right theories hold that no group has the right to secede unless it has grievances against the current state and its supporters other than the denial of the right to secede itself. A genuine right to secede always piggybacks on other grievances, which must involve serious violations of the basic rights of the would-be seceders (this could consist in the current state's

continued holding of territory that was initially unjustly acquired by conquest or wrongful annexation). Other conditions could be added to the conditions for just secession, including the requirement to share costs of the separation equitably with those left behind and the requirement to offer credible assurance that the new state formed by secession will do better in protecting the basic moral rights of all within its jurisdiction than the current state has done and is likely to do. These extra conditions can be added to either type of theory. The key difference is whether or not willing to form a new nation gives a group (of the appropriate sort) a right to secede in the absence of further grievances against the existing state.

Buchanan defends a version of the remedial right only type of theory of justified secession. His position may be contrasted with the position on this issue developed by Avishai Margalit and Joseph Raz.

One comment: Buchanan argues against the idea that there is a primary right to secession partly on the ground that the attempt to implement such a right in present circumstances would or might have bad consequences. But consider the claim that humans have a moral right not to be enslaved. Suppose there are historical periods and circumstances in which any attempt to enforce such a right would do no good and just make things worse for slaves. Then presumably in those historical periods and circumstances we should not attempt to enforce any such right. This consideration does not by itself seem to suffice to settle the question, whether or not humans have a moral right not to be enslaved.

Will Kymlicka on cultural membership.

Consider a geographically concentrated group within an existing nation that demands some degree of autonomy or self-determination—some freedom to run its own affairs independently of the policies and laws set by the nation as a whole. The group might also demand some forms of accommodation from the larger society that it is hoped would foster the survival and flourishing of the group. For example, a group with a common language different from the language of the larger society might request that public education for group members be conducted in its home language or that the group language be officially recognized for use in transactions between public officials and group members.

Possible examples of groups that might fit this broad description:

- Native American tribes in the U.S. and Canada.
- withdrawing communities of Amish and Mennonites. The members of these religious groups seek to withdraw to some degree from contact with the modern world.
- French-speaking Canadians in Quebec, Canada.
- immigrant groups such as Korean-Americans in the U.S.
- surfers in Southern California.

I include the last group because I presume few would hold that surfers as such are entitled to special rights or special accommodation. The challenge then is to identify the features of groups that do entitle them to special consideration.

Will Kymlicka has worked out an account of cultural minorities and group rights. To get his position into plain view, we need to add a feature of it not mentioned in the Kymlicka course reading.

We need to distinguish immigrant groups and national minorities, Kymlicka says. The immigrant group is composed of people, along with descendants of people, who sought entry into the host country. For these groups, Kymlicka thinks, there is a rational expectation that the group members will integrate into the mainstream language and culture of the host country. If justice requires special help for immigrants, this will be special help to assimilate.

In contrast, Kymlicka identifies *national minorities* as groups whose incorporation into the host country was nonvoluntary. They became part of the host country by being conquered or annexed. They are also “nations in the sociological sense of being historical communities, previously self-governing and more or less institutionally complete, occupying a given territory as homeland, and sharing a distinct language and history.” Kymlicka thinks national minorities, but not immigrant groups, are entitled to autonomy and accommodation.

One might hold, in the terminology of Ronald Dworkin, that the choice of an individual to continue in the ways of his forefathers or to assimilate to the dominant mainstream society of the society in which he lives is just that, a choice, for which one bears responsibility, not a circumstance that if a misfortune merits compensation. Recall that Dworkin thinks justice generally demands compensation for unchosen circumstances (if bad) but not for choices.

Kymlicka’s idea is that access to a societal culture is a resource, an important resource, so subject to egalitarian principles of distribution. For people who are members of the majority mainstream culture and share the mainstream language, access to a societal culture is an invisible good that passes unnoticed, because one gets it virtually automatically, just by living in the society. But for outsiders, those who do not share the mainstream language and culture, access to societal culture may be problematic.

So what’s a “societal culture? Kymlicka also speaks of cultural structures in this connection. How do we individuate societal cultures? How do we tell if we have one or lack one? Observing a society, how does one tell whether the society contains, one, two, three, or some other number of them? There seem to be two key features of a societal culture of a group of people:

1. a common language among group members.
2. A set of institutions and practices that add up to a way of life.

On page 432, Kymlicka observes that a societal culture involves “a shared vocabulary of tradition and convention” that underlies a full range of social practices and institutions.

Having access to a societal culture is a Dworkinian resource or Rawlsian social primary good because “freedom involves making choices amongst various options, and our societal culture not only provides these options but also makes them meaningful for us” (p. 432). The idea seems to be that the things I might do at a time that are abstractly possible for me become real options eligible for choice when I interpret them as meaningful in the terms of the language I speak. Having a societal culture is necessary for having real freedom. The societal culture provides a context for choice.

To go back to our examples, Kymlicka would say that French-speaking inhabitants of Quebec and indigenous native peoples satisfy 1 and 2. A large immigrant community would typically exhibit 1 but not 2, but anyway according to Kymlicka the basic situation of immigrants (they or their ancestors voluntarily chose entry into the host country) precludes their having the group rights that he sees attaching to national minorities.

Kymlicka is at pains to deny that a societal culture is to be identified with particular values and practices. A societal culture can persist through big changes in values and practices. Also, for an individual, having access to a societal culture makes possible contrarian choices—being a member of a Chippewa tribe, I can rebel against its folkways.

So far we have the idea that given what a societal culture is, people need to have access to one or another. But a country could meet this need by providing all its members including members of national minorities within its borders the wherewithal to become proficient in the dominant mainstream culture and language.

Kymlicka wants to argue that people have a right to access to one’s own societal culture. So, for example, the French-speaking inhabitant of Quebec has a right to access to that societal culture, his own. That right might give rise to duties on the part of other Canadians to make provisions that keep this French-speaking culture alive and well. Merely providing all Canadian children

special help to learn English if they need special help would not meet the duty as Kymlicka conceives it. One's own societal culture is the one in which one was born and raised.

Kymlicka raises the question, "Why not let minority cultures disintegrate, so long as we ensure that members have access to the majority culture?" (p. 433). After all, people can and do switch cultures. Kymlicka muses, "why do minority cultures have a right to anything more than noninterference, rather than state support?"

Kymlicka's reply is that learning a new language and culture is a difficult choice for most people. They are understandably strongly attached to the one in which they are born. It is unreasonable to demand that people should undergo the costly process of assimilation. In multination states, states with national minorities—that is, most states in the world—the right to access to one's own societal culture entails strong duties of positive assistance to minority culture survival.

Kymlicka mentions that the importance of one's own societal culture to people explain why open political borders are not required by justice. The members of a dominant mainstream culture in a country would be dismayed if the borders of the nation were opened and so many immigrants poured in that the initial inhabitants no longer have secure access to the societal culture in which they were raised. People are not required by justice to accept such cultural upheaval and dilution costs .

Kymlicka's conclusion: National minorities within a nation are entitled to autonomy and accommodation.

Some questions:

1. Why is the distinction between immigrant group and national minority so consequential? From the standpoint of the children of immigrants, their position in the host country is unchosen. For children of immigrants as for children born into a national minority, assimilation into the dominant mainstream culture and language might be equally difficult and equally onerous due to attachment to one's own language and culture. Yet for Kymlicka the rights to societal culture one acquires and the corresponding duties the remaining members of society must fulfill vary greatly depending on whether one is a member of an immigrant group or not.

2. What do we say if the way of life of a national minority is seriously impoverished? Compare French-speaking Quebec societal culture, which provides its members roughly the same range of options for choice as English-speaking Canadian culture, with the societal culture of a hunter-gatherer tribe insistent on maintaining its ancient ways. Such a group may provide education and socialization for its children that provides them very little real freedom to participate in a wide array of ways of life open to other members of society. This claim is controversial, I recognize. If one accepts it, one might see a similar problem in claims to autonomy and accommodation made by withdrawing Amish and Mennonite religious communities. Might a child's right to an open future trump the parents' right to maintain the national minority culture?

3. Various theories of democracy—especially, perhaps, deliberative democracy theories—might hold it is very desirable that all citizens of a nation speak a common language. Speaking a common language is deemed desirable on the ground that it greatly facilitates the achievement to a high degree of one or another ideal of democracy for the society. The deliberative democracy ideal requires that all citizens participate in a rich and ongoing conversation about the common good and how to implement it in policies and laws that then shapes the outcomes of the political process. Speaking a common language make it easier to carry on the deliberation of deliberative democracy.

One might also speculate that sharing a language and perhaps sharing a culture tends to foster the wide sympathy and sentiments of solidarity uniting all members of the nation that help to make a democracy operate efficiently and with outcomes fair to all.

On these grounds one might imagine a nation committed to one or another democratic ideal resisting the Kymlicka arguments for accommodation to minority cultures. The counterview would be that sustaining a common language among all members of society facilitates the excellent functioning of democracy in that society.

4. In our course reading Kymlicka does not specify what sorts of accommodation and autonomy might be justified for national minorities by the arguments he advances. But looking down the road to where these arguments will likely lead, one can envisage a difficulty.

Suppose that a nation such as Canada promotes the survival and flourishing of national minority cultures as Kymlicka says it must by granting considerable rights of political autonomy to such groups. Consider an indigenous people with a hunter gatherer culture that exercise its political autonomy self-government rights in ways that violate what would ordinarily be basic rights and liberties of Canadian citizens. For example, the tribe enforces on its members a traditional code that discriminates in many ways against women. Let us say women who marry outside the tribe lose the status of tribal membership but men who marry outside the tribe retain tribal membership status for themselves and their spouses and children. Or perhaps men are permitted to vote on tribal affairs and participate in other ways in the government of the tribe, but not women. Or perhaps the traditional rules of the tribe permit and encourage selling female children into arranged marriages without their full and free consent. There is then a conflict between granting some measures of political sovereignty and self-government to the national minority and sustaining equal protection of the laws with their guarantees of basic liberties and freedoms for all citizens of the nation. In this sort of conflict, what should give way?