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## CHAPTER 1

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# Introduction: Liberalism and the Accommodation of Cultural Diversity

## 1.1 Competing Interpretations of Liberalism

Conflicting claims about culture are a familiar refrain of political life in the contemporary world. On the one side, majorities seek to fashion the state in their own image. They want to see their own values, traditions, norms, and identity expressed in meaningful ways in public institutions. From the majority's perspective, the expression of their culture in collective decisions is simply a matter of majority rule or democracy. It is normal for states to be shaped by the majority's culture, and there is nothing objectionable about such shaping so long as certain liberal limits are observed on how it is done.

On the other side, cultural minorities often press for greater recognition and accommodation by the state. They want public institutions to be designed in such a way as to leave them spaces in which to express and preserve their own distinct cultures. For minorities, these demands for recognition and accommodation of their distinctiveness are consonant with liberalism's concern about tyranny of the majority, its commitment to tolerating difference, and its ideals of equal citizenship.

We can observe these different claims in a variety of contexts. One important area is language policy. Majorities frequently prefer to establish their own language as the principal medium of public communication—the language in which services are offered to the public and in which public business is conducted. Minorities, by contrast, ask the government to provide services in their languages and to make it possible for them to use their own languages when they participate in public institutions. Another area in which claims of culture are voiced is in the design of democratic institutions. Statewide majorities tend to be comfortable with a unitary state, which reflects their sense of political community and which allows their preferences to predominate. Minorities, by contrast, typically want institutional and jurisdictional spaces to be carved out in which they can enjoy a measure of autonomy and self-government. Other flashpoints include the school curriculum, the use of

public space, and the designation of symbols, flags, anthems, and other conspicuous markers of identity.

We might think of the differing claims about these issues as claims of *majority nationalism*, on the one hand, and *minority rights*, on the other. These claims are in considerable tension with one another. Suppose we understand the majority nationalism claim as saying that no injustice is produced when state institutions and policies are made to reflect the values, traditions, narratives, and identity of the majority, so long as standard liberal constraints are satisfied. And let us take the minority rights claim to be insisting that, as a matter of justice, the state ought to recognize and accommodate the cultures of minorities by leaving spaces in which at least some institutions and policies can reflect minority values, traditions, narratives, and identity. Without significant further qualification, these assertions cannot both be true. If it is consistent with justice for the majority to shape the state's institutions and policies according to its own culture, then it cannot be a requirement of justice that some of the state's institutions and policies be shaped by minority cultures. For instance, if there is no injustice in the statewide majority declaring its own language to be the sole official language of public communication, then it cannot be true that providing minority-speakers with rights to the public use of their language is a matter of justice. If it is not wrong for the statewide majority to establish a unitary system of government that corresponds to its sense of political community, then an autonomy scheme designed to empower some cultural minority cannot be considered a requirement of justice. And so on.

There is no single view among liberals about the merits of these competing claims. In practice, many liberal democracies around the world do offer some recognition and accommodation of cultural minorities. A list of states extending significant language rights to minority language speakers would include dozens of entries. Canada, Belgium, Switzerland, Spain, the United Kingdom, India, Israel, and South Africa are just a few of the most prominent examples. Many states have also incorporated arrangements into their constitutions, such as regional and other forms of autonomy, that are aimed at giving cultural minorities a measure of self-government. Federalism in Canada, Belgium, India, and Iraq can be understood, in part, through this lens, as can Scottish and Welsh devolution in the United Kingdom, the Swiss system of cantons, Spain's autonomous regions, and various experiments around the world with indigenous self-government. Examples of states providing accommodations and exemptions for cultural and religious groups are also quite prevalent. Some well-known cases include special hunting and fishing rights for members of indigenous groups; exemptions from workplace helmet requirements for Sikhs; requirements that publicly funded cafeterias (e.g., in public schools) be sensitive to the religiously and culturally based diets of those they serve; and exemptions from sport, school, and workplace dress codes.

While the practice of extending recognition and accommodation to cultural minorities is widespread, it is certainly not universal. The political traditions and reigning ideologies of many states remain deeply suspicious of minority rights. In France, and in countries influenced by the French republican model, there is a tradition of identifying equal citizenship with the notion of a common public culture and with the relegation of particular cultural and religious identities to the private sphere. Inevitably the common public culture is aligned in certain respects with the majority culture: it is the majority's language that serves as the common language of the republic; it is the majority's sense of political community that determines the boundaries and internal constitution of the republic; and it is the majority culture that influences the choice of public symbols and norms. While harder to encapsulate in a single model than the French tradition, the American case has also been an important example of a successful state built around a single, common language and a strong and generally shared sense of national identity. Although the United States is notable for its tradition of accommodating religious differences, Americans remain reluctant to extend significant language or self-government rights to cultural minorities. Indeed, if anything, the political impetus has been pushing in the opposite direction, with English-only and English-first laws and ordinances finding support in many states and municipalities, and with politicians rarely missing an opportunity to remind immigrants of their obligation to learn English.<sup>1</sup>

So practices of both minority rights and majority nationalism are well established in liberal democracies around the world. Something of this same mix of attitudes is discernible among the political theorists who have thought and written about claims of culture from within the broadly liberal tradition. Over the past quarter-century or so, one of the remarkable developments in political theory has been the groundswell of interest in questions relating to culture, identity, and difference. A group of theorists, including Will Kymlicka, Joseph Raz, Charles Taylor, Yael Tamir, David Miller, and Joseph Carens, have sought to mobilize the resources of liberal political thought to make a principled case in favor of minority cultural rights.<sup>2</sup> Although the language and argumentation vary from person to person, the distinctive claim made by these theorists is that particular minority cultural rights are, *as such*, a requirement of justice conceived of in a broadly liberal fashion (I explain the “as such” qualifier below).

<sup>1</sup>On language policy in the United States, see Schmidt 2000; Schildkraut 2005; Rodríguez 2006. Puerto Rico is an important exception to the privileging of English.

<sup>2</sup>Kymlicka 1989b; 1995; 2001a; Raz 1994; Taylor 1994; Margalit and Raz 1990; Tamir 1993; Miller 1995; Carens 2000. Other notable contributions to this literature include Spinner 1994; Margalit and Halbertal 1994; Tully 1995; Parekh 2002; Gans 2003.

Kymlicka has called this thesis “liberal culturalism.”<sup>3</sup> Liberal culturalism, he says, is “the view that liberal-democratic states should not only uphold the familiar set of common civil and political rights of citizenship which are protected in all liberal democracies; they must also adopt various group-specific rights or policies which are intended to recognize and accommodate the distinctive identities and needs of ethnocultural groups.”<sup>4</sup> As Kymlicka lays out the view, both “liberal nationalism” and “liberal multiculturalism” fall under the umbrella of liberal culturalism. Liberal nationalism calls for recognition and accommodation of the national cultures and languages—both majority and minority—that fall within the boundaries of a state. And liberal multiculturalism claims that nonnational cultural groups, such as immigrant groups and religious minorities, “have a valid claim, not only to tolerance and non-discrimination, but also to explicit accommodation, recognition, and representation within the institutions of the broader society.”<sup>5</sup> Each of these views claims the mantle of liberalism in virtue of two main considerations. They are said to be derived from liberal ideas of freedom, equality, and justice. And they recognize a variety of limits that are motivated by liberal principles on what can and should be done to accommodate and recognize particular groups: liberal forms of accommodation and recognition do not violate standard rights and liberties; they operate with inclusive conceptions of membership; they do not impose membership in particular groups on individuals; they do not facilitate aggression by one group against another; and so on.<sup>6</sup>

In reaction to the wave of liberal-culturalist scholarship, another group of liberal theorists has argued that the older understanding of liberal political theory, typified by the principles of justice defended by John Rawls, is perfectly adequate for thinking about the claims of cultural minorities, even if it was not originally developed with those claims in mind.<sup>7</sup> The theorists I have in mind include prominent political philosophers such as Jeremy Waldron, Brian Barry, Anthony Appiah, and Samuel Scheffler.<sup>8</sup> These philosophers have challenged liberal culturalism on a number of points: they have drawn attention to various perverse effects that might be associated with the culturalist program; they have taken issue with the claims about freedom and equality made by liberal culturalists; and they have challenged the conceptualization of culture relied on by proponents of minority cultural rights. For the most part, these thinkers do not go out of their way to praise majority nationalism as an alternative to minority rights. But their understanding of liberalism does not

<sup>3</sup>Kymlicka 2001a, chap. 2.

<sup>4</sup>Ibid., 42. See also the formulation in Raz 1994, 172–73.

<sup>5</sup>Kymlicka 2001a, 41.

<sup>6</sup>Ibid., 39–42.

<sup>7</sup>Rawls 1999a; 2005.

<sup>8</sup>Waldron 1992; 2010; Barry 2001; Appiah 2005; Scheffler 2007. Other notable critiques of liberal arguments in favor of cultural rights include Danley 1991; Kukathas 1992; 2003; Blake 2002.

contain grounds for condemning majority nationalism, so long as core liberal principles are respected.

Although the debate was barely ten years old at the time, by 1998 Will Kymlicka was suggesting that a consensus had started to form in favor of liberal culturalism. Theorists continued to disagree about why, exactly, culture matters to people in ways that should elicit liberal attention. And they disagreed about how the principles of cultural justice should be applied and institutionalized in particular contexts. But, in Kymlicka's view, there was no clear competitor with liberal culturalism out on the field, and thus "liberal culturalism has won by default, as it were."<sup>9</sup>

As major parts of this book will reveal, I am generally very sympathetic with Kymlicka's theory of cultural rights. Indeed, part of my ambition in the book is to develop Kymlicka's theory further and to try to place some of its major claims on more secure foundations. It is a premise of this project, however, that Kymlicka's declaration of victory was somewhat premature. Of course, insofar as I seek to defend a version of liberal culturalism, I provide one more data point confirming Kymlicka's hypothesis that, in Nathan Glazer's phrase, "we are all multiculturalists now."<sup>10</sup> But I think that Kymlicka's declaration both overestimates the strength of the existing arguments in favor of liberal culturalism and underestimates the coherence and plausibility of a rival, non-culturalist interpretation of liberalism. What is needed, and what I aim to provide in this book, is a restatement of the ethical foundations of liberal culturalism. Such a restatement needs to confront, and to take seriously, the powerful alternative conception of liberalism that retains a grip among many liberals.

Rethinking the foundations of liberal culturalism will have important implications for how that view is formulated. Kymlicka and other liberal culturalists are actually quite sympathetic with majority nationalism. They object to the idea that the *statewide* majority should be able to impose its preferences throughout the state. This would leave insufficient space for the legitimate cultural aspirations of minorities. But they do not reject the narrower claim that majorities should be able to impose their preferences *if* appropriate substate autonomy arrangements are established so that there are several majorities. Their central contention is that minorities ought to have the same opportunity to form (local) majorities and to use their majority power to express their culture as is enjoyed by the statewide majority at the national level. For these theorists, then, minority cultural rights are not opposed to nationalism but instead represent a demand to pluralize it: to give more than one group within the state the chance to have its own political community and to express itself culturally through the public institutions of that community.

<sup>9</sup>Kymlicka 2001a, 43; also 33.

<sup>10</sup>Glazer 1998.

In my view, this widely endorsed version of liberal culturalism is much too cozy toward liberal nationalism. Cultural groups do not always have a nationalist agenda and are not always in position to pursue one. Even where they do pursue such an agenda, it should be looked on with some suspicion whenever it affects a culturally diverse population. In reexamining the foundations of liberal culturalism, we shall discover that the best reasons for affirming such a view are also reasons for a more general rejection of nationalism. The idea of accommodating national minorities through substate autonomy arrangements is an important and worthy one. And there may be secondary, pragmatic considerations that counsel in favor of deferring to nationalist claims. But we should resist the suggestion that justice ultimately consists in majority and minority each enjoying the opportunity to culturally dominate some part of the state.

## 1.2 Why the Case for Liberal Culturalism Needs to Be Restated

One reason why a restatement is needed is that a number of the existing arguments in favor of liberal culturalism seem vulnerable to serious objections. One prominent strand of argument in liberal culturalist writings has appealed to the liberal value of autonomy or freedom. The claim is that culture is a necessary part of the background context in which individuals make a succession of choices about how to live their lives.<sup>11</sup> As Kymlicka formulates the claim, “freedom involves making choices amongst various options, and our societal culture not only provides these options, but also makes them meaningful to us.”<sup>12</sup> Since liberals plainly attach great value to protecting and fostering individual freedom and autonomy, they would seem to have a compelling rationale for supporting forms of recognition and accommodation that help to secure vulnerable cultures.

Commentators since the early 1990s, however, have consistently pointed out the problem with this argument.<sup>13</sup> It may well be true that, in some sense, people rely on culture for a context of choice. But it does not follow that the culture they rely on has to be *their* culture if that means the culture in which they were brought up and with which they identify. Since people can (and regularly do) assimilate into new cultures, the autonomy argument does not, on its own, provide a special reason why any particular culture ought to be recognized and accommodated.

<sup>11</sup>A number of the main liberal-culturalist authors have forwarded an argument of this form. See Kymlicka 1989b, chaps. 8–9; 1995, chap. 5; Tamir 1993; Raz 1994; Miller 1995, e.g., 86, 146. For a critical overview, see Patten 1999b.

<sup>12</sup>Kymlicka 1995, 83. See also Tamir 1993, 36, 84; Raz 1994, 175–78; Miller 1995, 86, 146.

<sup>13</sup>Waldron 1992; Margalit and Halbertal 1994; Tomasi 1995; Forst 1997. I discuss the problem in Patten 1999a; 1999b; and in chapter 3.

A second strand of argument in the liberal-culturalist enterprise is designed in part to address this shortcoming in the first. As many writers on cultural rights have observed, culture can be an important basis for individual identity. People often care about their culture and feel attached to it. Their cultural membership makes a difference in their practical reasoning in a variety of situations. Their culture is important to their sense of who they are, and the loss of the culture may even have psychologically devastating consequences. These considerations, it is suggested, help to explain why individuals have a legitimate interest in enjoying a context of choice in their own culture.<sup>14</sup> More generally they mean that individuals have a valid claim on state recognition and accommodation of their culture.

Here I think that the argument suffers from something like the opposite defect of the previous argument. One can make out how strong “culturalist” conclusions might follow from the premises of the identity argument. But it is less clear what those premises have to do with liberal principles in the first place. Whereas the idea that liberals should protect and promote the conditions of individual autonomy is immediately intuitive, the notion that a liberal state has any obligation to ensure that people are able to realize the commitments that happen to be associated with their identity is not. Theorists who make the identity argument have not, in short, explained why, and in what ways, identity is something that liberals should care about.

A third strand of argument was absent from the earliest statements of liberal culturalism but has become increasingly prominent since the publication of Kymlicka’s *Multicultural Citizenship*.<sup>15</sup> This argument appeals to the idea of neutrality or, to be precise, the inevitable nonneutrality of the state when it comes to culture and identity. The idea is to drive a wedge between the possible liberal responses to religious and cultural pluralism. Whereas the liberal state can handle religious diversity through a policy of disestablishment—a refusal to privilege or promote any particular religious faith—the same solution is not available for dealing with cultural diversity. The state cannot avoid decisions about language, internal boundaries, school curriculums, public symbols, and so on—all of which work to advantage some particular cultures and identities and not others. Because the state is necessarily not neutral in these areas, there is no fundamental objection to it pursuing various liberal forms of nation building based around the majority national culture. But then it follows that, as a matter of fairness, “all else being equal, national minorities

<sup>14</sup>Margalit and Halbertal 1994; Kymlicka 1995, 89–90; Forst 1997. Taylor (1994) also makes an “identity” argument of sorts.

<sup>15</sup>Kymlicka 1995, 107–15; 2001, introduction and chaps. 1–2; Moore 2001, 130–31; Norman 2006, 49–57. The limits of the liberal idea of neutrality in matters cultural are also emphasized by Young 1990; Spinner 1994; and Carens 2000.

should have the same tools of nation-building available to them as the majority nation, subject to the same liberal limitations.”<sup>16</sup>

In its present form, this neutrality argument also strikes me as inconclusive. It operates with an impact- or effects-based conception of neutrality (the state is neutral only when its policies do not generate a net advantage or disadvantage for any culture or conception of the good) that liberals who call for neutrality have rarely if ever endorsed.<sup>17</sup> Liberals who instead adopt a justificatory conception of neutrality have no trouble condemning certain forms of nation building (which *aim* to promote a particular national culture) even while allowing that the state will inevitably need to make decisions about language, boundaries, curriculums, and the like that will predictably have an impact on particular cultures and identities. So long as these necessary decisions are made on the basis of general liberal values, and not on the grounds that some particular culture or conception of the good is superior, there is no departure from neutrality.

There are at least *prima facie* reasons, then, to think that liberal culturalism rests on shakier normative foundations than its defenders like to believe. At the same time, there are also grounds for thinking that the rival, nonculturalist interpretation of liberalism, which was the standard view before the 1990s, is more coherent and plausible than its liberal-culturalist critics allow. One major reason for this has just been given. Kymlicka maintains that the nonculturalist position “faces the problem that its traditional pretensions to ethnocultural neutrality can no longer be sustained.”<sup>18</sup> But, as we have just seen, if neutrality is conceptualized in terms of justifications rather than effects, this particular problem disappears.

A further consideration is that the nonculturalist position can go much further than one might expect in accounting for the legitimacy of certain protections for minority cultures. Nonculturalist liberals reject the thesis that certain minority cultural rights are, *as such*, a requirement of liberal justice. They do not think that recognition and accommodation are directly demanded by justice. The rejection of this thesis still leaves them with plenty of resources, however, for justifying many of the policies advocated by liberal culturalists.

Consider some of the ways in which nonculturalist liberals can still justify rights and policies that provide significant opportunity and protection to cultural minorities:

- The standard set of civil rights endorsed by all liberals provides considerable space for cultural minorities to express and organize themselves. For example, one does not need to be a liberal culturalist to think that

<sup>16</sup>Kymlicka 2001a, 29.

<sup>17</sup>For this criticism, see Barry 2001, 27n20; Arneson 2003, 194n7. The point is nicely elaborated in Stilz 2009. For a related discussion, see Kukathas 1997, 422–23.

<sup>18</sup>Kymlicka 2001a, 43.

- it would be wrong for the state to prohibit minorities from publishing books or newspapers in their own language or from organizing into clubs and associations aimed at furthering their culture and identity.
- Widely supported claims of distributive justice may also provide a reason to support certain kinds of policies specifically targeted at cultural minorities. Minority-culture status often interacts with and reinforces socioeconomic inequality. If certain group-specific policies help to alleviate inequality and disadvantage, then culturalist and nonculturalist liberals alike have a reason to adopt those policies that has nothing to do with promoting or recognizing culture as such.
  - Liberals of every stripe also acknowledge certain democratic political rights. On issues where justice neither obliges nor prohibits a particular policy from within a range of possibilities, the test of legitimacy is endorsement by the democratic political process. By virtue of their democratic rights, cultural minorities are entitled to struggle politically for permissible laws and policies that accord them a measure of recognition and accommodation. The rationale for these laws and policies is not a principle of *cultural* justice but a requirement of *political* justice that all citizens be given the right to participate as equals in the shaping of public policy.
  - Finally, an important principle for all liberals is the rule of law. States should respect the laws they have adopted, the treaties they have entered into, and the constitutional provisions that bring them into existence in the first place. This means that they now have a strong, principled reason to respect laws, treaties, and constitutional provisions that extend recognition and accommodation to cultural minorities, even if justice did not require that they adopt those measures in the first place and would not require them to adopt or respect those measures now if it were not for the importance of the rule of law.

To be clear, the suggestion is not that societies claiming to be liberal have generally observed these principles. Clearly, often they have not. Rather, the point is that we need not encumber liberalism with principles of cultural justice to have the theoretical resources necessary to articulate what is going wrong when liberal societies reject all rights that offer protection to cultural minorities. Applied with a certain amount of cultural sensitivity, noncultural liberalism already gives us some purchase on such cases.

It should be clear from this that the difference between culturalist and nonculturalist interpretations of liberalism is not necessarily about advocacy. For some of the reasons I have just been citing, liberals of both allegiances may end up agreeing on what the right policy is. In these cases, their disagreement concerns *why* the policy in question is the right one, with nonculturalists emphasizing the ways in which the policy furthers standard, nonculturalist

liberal concerns, and culturalists arguing that the policy also realizes principles of cultural justice. In addition, the policy differences between culturalists and nonculturalists are likely to be further muddled by the fact that both will have to trim their sails in certain situations to take into account pragmatic and other contextual considerations. As we shall see below, good policy is typically more complicated than simply applying the relevant abstract principle.

The disagreement between culturalist and nonculturalist liberalism is first and foremost, then, a philosophical one. It is a disagreement about the *grounds* for thinking that the state should adopt certain measures and policies and refrain from adopting others. Once this question of justification is worked out, however, there will almost certainly be some implications for advocacy. The culturalist view will approve of certain measures and policies where the nonculturalist view would disapprove or be indifferent. The policies favored by the nonculturalist view are likely to have certain predictable characteristics. They will tend to protect cultural difference in private contexts rather than in public institutions. Where they do impinge on public institutions, it will often be on a temporary and transitional basis. And where they do apply to public institutions in a more permanent fashion, it will likely be in a somewhat haphazard fashion, depending on the accidents of constitutional history and majoritarian politics. By contrast, the culturalist view, as I shall develop it throughout this book, is mainly concerned with the *ongoing* treatment and standing of cultural minorities in *major* decisions about *public* policy and the design of *public* institutions.

The principal aim of the present book is to explore and evaluate the differences between culturalist and nonculturalist forms of liberalism. Are the theoretical resources supplied by the standard, nonculturalist interpretation of liberalism adequate on their own for understanding how states ought to treat their cultural minorities? Or do those resources need to be supplemented by the liberal-culturalist idea that certain minority cultural rights are, *as such*, a requirement of liberal justice? As I have hinted already, the main claim of the book is that we should prefer the second of these alternatives. My thesis is that there are basic reasons of principle for thinking that cultural minorities as such are owed specific forms of recognition and accommodation. I shall sometimes refer to this as the *strong cultural rights thesis*. Strong cultural rights are moral rights, which are grounded in basic reasons of principle, to certain forms of recognition and accommodation.

In developing this thesis, I shall take as the main opposing hypothesis the view that there is no basic liberal reason for thinking that cultural minorities as such are owed particular forms of accommodation and recognition as a matter of principle. My imagined opponent can acknowledge what I shall call “pragmatic” and “derivative” reasons for supporting certain policies of accommodation and recognition. She can even grant that it would be permissible for cultural groups, working through the democratic political process, to win

for themselves certain accommodations or forms of recognition. What she does not accept—and what distinguishes her view from the one that I shall defend—is that there are strong cultural rights.

As noted earlier, a defense of the strong cultural rights thesis will inevitably have implications for how such rights are understood. The argument I develop points away from a nationalist conception of strong cultural rights and toward a more fully inclusive conception. I shall return to this theme in section 1.4. First, however, let me be more precise about the overarching disagreement between culturalist and nonculturalist liberalism.

### 1.3 Four Distinctions, Plus One More

To further isolate the disagreement and motivate the discussion, it is useful to introduce four distinctions. One is between principled and pragmatic reasons why a liberal might adopt policies of cultural accommodation and recognition. The second is between basic and derivative senses in which liberal principles might be said to mandate policies that offer accommodation and recognition to cultural minorities. The third is between the view that accommodations are owed to cultural minorities themselves as a matter of basic principle and the view that there are impersonal and/or third-party-regarding reasons of basic principle for adopting policies of accommodation and recognition. And the fourth is between the view that accommodations are *owed* to cultural minorities and the view that it would be permissible for a liberal political community to make such accommodations. My claim, as I have said, is that there are *basic* reasons of *principle* for thinking that certain policies of recognition and accommodation are *owed to cultural minorities* as such. By discussing the four distinctions, I attempt to explain and motivate the italicized terms.

The four distinctions not only isolate the claim I am interested in defending but also help to show that the claim is a very strong one—one that is very far from being obviously true. Indeed, by the time I finish describing the fourth distinction, some readers may have decided that the claim is highly *unlikely* to be true. The fifth and final distinction I introduce mitigates the strength of the claim somewhat, without rendering it trivial. This is the distinction between saying that a particular right or normative requirement retains its full force in all contexts (it is context-invariant) and the claim that it has full force in some but not all contexts (context-dependent).

#### PRINCIPLED NOT PRAGMATIC

To think about the principled reasons for adopting some policy is to think about the intrinsic merits of the policy and the consequences that would result from people following the rules and procedures, and enjoying the benefits,

established by the policy. A principled reason for adopting some policy of cultural accommodation, then, would refer to desirable properties of the policy of accommodation itself or to desirable results that would be achieved by the actions of people enjoying the accommodation. By contrast, someone interested in the pragmatic reasons that count for or against some policy emphasizes that people do not always comply with the rules and procedures established by particular policies or take advantage of the benefits that they offer. People may instead break the rules established by a policy that they do not like, or they may circumnavigate the policy by choosing some alternative option that is also available to them. Pragmatic reasons for or against some policy point to the consequences that would ensue as a result of people acting outside the framework established by the policy.

The distinction between principled and pragmatic reasons is seen, for instance, in debates about extending special forms of political autonomy to regionally concentrated national minorities. According to some people, the most salient consideration in these debates is not whether the forms of autonomy in question are required by justice but whether extending them would help to avert a secessionist crisis. People who reason in this way are emphasizing pragmatic rather than principled reasons. They are, in effect, saying that, even if justice does not require regional autonomy for national minorities, one has to take into consideration the likely behavior of national minorities who are denied the autonomy arrangements. National minorities would not necessarily resign themselves to living within an autonomy-denying, unitary political system but might increasingly turn to a secessionist alternative, thereby raising the likelihood of an unacceptable outcome. Under different conditions, the pragmatist might reach the opposite conclusion. Even if justice does require the provision of autonomy for some national minority, the pragmatic considerations might tilt in the other direction. It might be argued that regional autonomy would embolden local elites to drive for full independent statehood. The debate about Scottish devolution in the 1990s was largely conducted in these pragmatic terms, with proponents of devolution arguing that the new arrangement would ward off a nascent secessionist movement in Scotland and opponents claiming that devolution would hasten the dissolution of the union by giving secessionists a platform from which to broadcast their grievances.

Or, to take a second example, consider the debates over the public school curriculum in the United States. Many commentators express principled reservations about accommodations for evangelical families who object to the ways in which religious faith is discussed and presented in the classroom and in textbooks. Some of these same commentators concede, however, that accommodations might be a good idea for pragmatic reasons. Offering accommodations within the public schools would discourage families from opting for even less desirable options that are permitted to them, such as private re-

ligious schools or homeschooling.<sup>19</sup> The point is not that accommodations are intrinsically desirable or that desirable outcomes would come about when families take advantage of them. Rather, it is that families will not necessarily resign themselves to using the public system if a system of accommodations is not established but may instead choose some other option that comes with even more worrying consequences.

For the most part, my focus in the present book will be on principled rather than pragmatic arguments in favor of accommodating and recognizing cultural minorities. My central question is not whether there are *any* kinds of reasons for supporting specific forms of cultural accommodation and recognition as such, but rather whether there are principled reasons of this kind. Since pragmatic considerations clearly do have some weight in certain circumstances, it follows that the conclusions I shall argue for do not necessarily dispose of the practical question facing citizens and officials. I shall seek to clarify the principled considerations that are at stake, but this does not quite answer the “What should be done?” question since sometimes what should be done depends on pragmatic considerations.

Despite the relevance of pragmatic reasons, the principled reasons for or against accommodation and recognition policies are worth thinking about for their own sake. In part this is because it is sometimes appropriate to prioritize principled over pragmatic considerations. We are uncomfortable, for instance, about Lincoln’s statement that “if there be those who would not save the Union unless they could at the same time *destroy* slavery, I do not agree with them. My paramount object in this struggle *is* to save the Union, and *is not* either to save or to destroy slavery.”<sup>20</sup> Avoiding a secessionist crisis might have been a good pragmatic reason for compromising with the southern states on the issue of slavery, but many people today would prioritize justice over national unity in such a case.<sup>21</sup>

A second motivation for focusing on reasons of principle is that the pragmatic consequences may not be very pronounced one way or another, or they

<sup>19</sup>Macedo 1995, 487–88.

<sup>20</sup>Lincoln 1862. Lincoln went on to say that “I have here stated my purpose according to my view of *official* duty; and I intend no modification of my oft-expressed *personal* wish that all men everywhere could be free” —reaffirming that, as a matter of principle, he continued to hold that slavery was wrong.

<sup>21</sup>To call a consideration “pragmatic” is to not to deny that it is ultimately motivated by moral considerations. Lincoln’s belief in the value of national unity was based in part on a moral judgment about the significance of the American experiment with liberty and democracy for the progress of world history. For discussion, see Callan 2010, esp. 257. In fact, the considerations favored by pragmatists (e.g., unity and the avoidance of civil conflict) almost always have some recognizable moral basis. The point is that the reasons privileged by pragmatists come into play only because it is expected that some people will break the rules or circumnavigate the institutions that are based on immediate principle. Rather than accept that slavery is an illegitimate and immoral institution, for instance, they attempt to secede. For the reasons mentioned in the text, I am interested in thinking about the considerations of immediate principle. I am grateful to Jeff Tullis for encouraging me to clarify this point.

may be very difficult to discern. When this is true, and there is no strong pragmatic reason to act one way or another, citizens and officials are left with considerable latitude to follow principle. Clearly it is both interesting and important to think about the principled considerations for their own sake.

#### BASIC NOT DERIVATIVE

The second distinction is between two different kinds of principled considerations that might be advanced on behalf of specific policies of accommodation and recognition. Accommodation policies are sometimes defended in terms that suggest they are directly required by general liberal values and principles. As we saw in the previous section, liberal-culturalist authors have suggested that the case for minority cultural rights can be based directly on liberal values of freedom, equality, neutrality, and so on. Policies that could be defended in this way would be morally required even if it could not be shown that they make some further beneficial contribution to the realization of other principles of liberal justice. When a policy can be defended in this way, I shall say that there is a *basic* reason of principle that can be advanced on behalf of the policy.

In other cases, the argument for adopting the policy simply is that the policy would make a beneficial contribution to the realization of some other specific principle of liberal justice. In these cases, the argument for accommodation or recognition offers a *derivative* reason of principle. There is some other specific liberal principle that does not itself directly call for accommodation or recognition, and the argument is that the policy of accommodation or recognition would contribute to the realization of that other principle, either instrumentally or as an application of the principle.

In the previous section we noted a range of different derivative reasons that a nonculturalist liberal might emphasize as a means of reconciling nonculturalism with certain cultural protections. For a specific example of a derivative reason, consider the long-standing attempt by Turkish authorities to suppress the use of the Kurdish language. Although the situation seems to have improved somewhat in recent years,<sup>22</sup> an earlier policy made it illegal to publish newspapers or to make radio or television broadcasts in Kurdish. This policy was, of course, targeted at a particular cultural group, but one does not need to believe that there are basic reasons of principle supporting the accommodation or recognition of the Kurdish language to think that there was a violation of liberal justice. It is enough to recall that freedom of expression is an important liberal principle and to note that the freedom to decide which language to express oneself in is part of the freedom of expression.

<sup>22</sup>See chapter 6, n. 6.

Whether advanced by culturalist or nonculturalist liberals, derivative reasons are, in fact, routinely offered in debates relating to multiculturalism and cultural rights. Many multicultural policies aim to reduce discrimination against, and ignorance about, minority cultures. For instance, government agencies offer education and “sensitivity training” to teachers, police officers, judges, health-care workers, and other professionals who deal with a culturally diverse clientele on a daily basis. The rationale for these policies does not rely on any idea of cultural recognition or accommodation as goods in themselves. Rather, the point is to promote the responsiveness of the professionals in question to a normative consideration—the effective and unbiased delivery of their service—that, in itself, has nothing to do with recognition or accommodation. Transitional bilingualism approaches in the classroom have a similar rationale. At root their point is not to recognize or accommodate the ongoing use of minority languages but to prevent minority-speakers from falling too far behind in other areas (e.g., literacy, numeracy) while they learn the normal language of instruction in the school.

It is sometimes suggested that fairly far-reaching policies of accommodation and recognition can be defended on the basis of derivative reasons. When the Quebec government introduced dramatic new language legislation in 1977 aimed at making French the normal language of public and economic life in the province, one of the main rationales given for the policy referred to the history of discrimination that French-speaking Quebecers had been subjected to by the small but powerful English-speaking minority.<sup>23</sup> The claim was that French-speakers would likely never be equally treated in an economy operating in English and that the only way to ensure that Francophones did not continue to suffer from discrimination was to make the economy operate in French. A similar claim is occasionally advanced concerning Spanish-speakers in the United States.<sup>24</sup> Since discrimination against Spanish-speakers is endemic, even after they have learned English, the only way to protect their basic claims of justice, it is suggested, is to develop a Spanish-speaking society and economy in the United States. These arguments do not assume that the minority language accommodations they call for are directly required by justice but instead claim that they are essential to preventing other forms of injustice that themselves make no reference to cultural accommodation or recognition.

Jacob Levy has sought to develop the idea that there are derivative reasons in favor of certain policies of accommodation and recognition into a full-scale theory of multicultural rights. In Levy’s view, the tendency for majorities to oppress and discriminate against cultural minorities is deep and pervasive.

<sup>23</sup>Laurin 1977, 47–49.

<sup>24</sup>Some political theorists have suggested a trade-off between learning English and Spanish-language instruction in the public schools (see sec. 6.6). In response to this form of argument against rights to bilingual education, Stephen May (2003, 136) claims that “English is almost as inoperative with respect to Hispanic social mobility in the USA as it is with respect to black social mobility.”

One does not need fancy normative theories of cultural justice to see why constitutions should often extend minority rights to cultural groups. Instead, all one needs is a morally minimal concern to prevent oppression and fear, combined with the observation that the point of constitutions is, in part, to counterbalance prospective threats to liberty, security, and other basic interests. Once one takes seriously this insight about liberal constitutionalism, it may be possible to justify regional autonomy for national minorities, separate (or multilingual) institutions for linguistic minorities, and so on, without resorting to any difficult argument that justice inherently requires these arrangements.<sup>25</sup>

Although derivative reasons of principle play a crucial role in justifying some policies of accommodation and recognition, my focus in this book is on exploring whether there are any basic reasons of principle for supporting such policies. In part, the motive for zeroing in on the question of basic reasons is philosophical in character. However important derivative reasons might be in practice, they seem theoretically straightforward. By contrast, the claim that there are basic reasons to support policies of accommodation and recognition is widely disputed and is clearly in need of further elaboration and investigation.

If the motive for focusing on fundamental reasons of principle were merely philosophical, it might be hard to justify an entire book on the subject. But there is more to it than that. As I suggested in the previous section, there is reason to expect that the derivative and basic strategies of argument will support different policy conclusions. In general there is reason to suppose that, on their own, derivative reasons will justify a more minimal set of policies than would an approach that recognizes both derivative and basic reasons. It would be surprising if fundamental reasons justified no new policies at all that were not already supported by derivative reasons. We should expect that the policies supported by the derivative reasons are likely to be more focused on private contexts, more limited to transitional arrangements, and/or more dependent on the vagaries of constitutional history and electoral politics than policies supported by basic reasons. Derivative reasons would apply to, and last as long as, the cultural trait that makes a person vulnerable to mistreatment remains salient. If that person could be fully integrated into the mainstream culture—for example, by fluently mastering the majority language—it would be harder to find a derivative reason for thinking that the original culture requires some special accommodation if the person is to be protected from oppression.

As mentioned earlier, there are accounts that attempt to justify fairly far-reaching accommodation policies on the basis of derivative reasons. But these accounts underestimate the complexity of the relationship between policies of cultural accommodation and recognition, on one side, and core elements of liberal justice (e.g., minimizing fear and oppression) on the other. Judge-

<sup>25</sup>Levy 2000; 2003; 2004.

ments about this relationship will often be highly conjectural and vulnerable to reversal with changes in empirical assumptions. As the earlier example of Spanish-speakers in the United States suggests, it may simply not be clear what a concern for minimizing fear, oppression, or discrimination counsels one to do. There is certainly some plausibility to the suggestion that a robust set of Spanish-language rights would be bulwark against certain forms of discrimination and oppression to which Hispanic Americans might otherwise be subject. But there are also reasons to be hesitant about this conclusion. On the one hand, the United States (like other states) has had some success at integrating cultural minorities into mainstream society without recourse to cultural rights or accommodations. Ethnic groups, such as Irish Americans and Italian Americans, and religious groups, such as Catholics and Jews, now enjoy rough equality with other Americans along a variety of dimensions of concern to liberals, even though they were not granted significant cultural rights or accommodations. For someone whose sole concern was to minimize noncultural injustices toward Spanish-speaking Americans, it would be tempting to try to follow this strategy of integration. On the other hand, minority cultural rights are themselves no panacea when it comes to minimizing injustice. Policies of accommodation and recognition empower new majorities and new elites who may be disposed to adopt discriminatory or oppressive policies toward dissident members of the accommodated group or toward nonmembers. Before accepting the proposition that a robust set of Spanish-language rights would serve to minimize noncultural forms of injustice, we would want to know, for instance, how Hispanic Americans who prefer to use English would be treated under the proposed linguistic regime and also how Anglo Americans living in areas with heavy concentrations of Spanish-speakers would fare. I am not suggesting that these questions are unanswerable, nor am I arguing against Spanish-language rights in the United States. I am simply underlining how difficult it can be to form a reliable judgment about whether some proposed cultural accommodation would be good or bad from the standpoint of realizing noncultural elements of liberal justice.

A derivative-reasons-based approach does, I think, offer a firm basis for defending certain kinds of accommodations, including, as I have mentioned, those of a transitional character. But beyond a minimal set of transitional accommodations, it is far from clear what policies and constitutional arrangements relating to cultural minorities would do the best at minimizing noncultural injustices. In this respect, the derivative-reasons-based approach is similar to utilitarian and sociobiological arguments made in other arenas. If one feeds in the right empirical assumptions, these arguments can get you the desired conclusion. The problem is that if those empirical assumptions get tweaked slightly the conclusion changes. In this sense, the derivative principles approach does not, on its own, provide a secure and robust basis for defending policies of cultural accommodation and recognition. Given this conclusion, it

is important to explore whether there are basic reasons of principle, in addition to derivative ones, for supporting policies of the kind we are interested in.

#### MINORITY-REGARDING NOT THIRD-PARTY-REGARDING OR IMPERSONAL

A third distinction that helps to isolate the claim I want to make is between several different categories of reasons of basic principle that might be advanced in favor of cultural accommodations. Some such reasons refer especially to burdens that individual members of cultural minorities would face should the laws and institutions of the society not extend a particular accommodation to them. I call these *minority-regarding* reasons of basic principle.

Minority-regarding reasons can be contrasted with both *third-party-regarding* and *impersonal* reasons of basic principle. Third-party-regarding reasons do not, in arguing for a particular accommodation, privilege the standpoint of individuals belonging to the cultural minority that would enjoy the accommodation. Instead they refer to the interests of some other or broader group, typically all members of the society in question or even all people in the world. At the limit, the claim made in appealing to such a reason is that *everyone* would benefit if some particular accommodation were to be made. Impersonal reasons depart even more radically from minority-regarding ones. Unlike both minority-regarding and third-party-regarding reasons, they invoke a kind or dimension of value that is not ultimately reducible to the interests or well-being of individuals.<sup>26</sup> The claim made in offering such a reason is that the failure to extend an accommodation would result in a loss of value in the world that does not reduce to the diminished prospects of individual persons.

It is common to hear all three kinds of reasons in debates about cultural accommodations. When Britons debate whether to provide more Welsh-language services, the claim is sometimes made that Welsh-speakers themselves have such a significant interest in this being done that others have an obligation to accommodate them even if that means bearing some net cost. This of course is a minority-regarding form of reasoning. But different kinds of argument are also made. Sometimes the claim is that everyone benefits from living in a linguistically diverse society. With more languages, people have more options, and this enhances their capacity to direct their own lives.<sup>27</sup> Linguistic diversity is good, in this sense, in part because some people might want to choose to lead a life of Welsh-speaking. But it is also good because

<sup>26</sup>In Michael Blake's phrase (following Joel Feinberg), cultural loss, in this view, is a "free-floating evil," which is independent of any reference to human interests. For discussion and critique, see Blake 2002, 644–48. Another insightful critique of the attempt to derive cultural rights from a notion of cultures as intrinsically valuable is Johnson 2000. Johnson argues that such a view has trouble making sense of the basic fact that some cultural practices are "reprehensible"; this fact makes more sense in a view that connects cultures with human interests. For a third good critique, see Weinstock 2003, 252–56.

<sup>27</sup>Goodin 2006.

the existence of other language communities is likely to generate new options and experiments in living that would never occur to people speaking some particular language with its own conceptual scheme and patterns of discourse. At other times the argument is that preserving Welsh is analogous to conserving a species, or a piece of great art, or protecting an unspoiled place of natural beauty. Even if no individual's interests would be adversely affected by the loss of Welsh, the world would lose something valuable if it were to die out.

The focus in this book is on exploring the minority-regarding reasons that can be advanced on behalf of cultural accommodations. I am interested in whether there are considerations of justice *to* minorities that support the provision of such accommodations, and not in the broader question of whether there are *any* (basic, principled) reasons for their provision. By their very nature, the third-party-regarding and impersonal reasons would not leave minorities themselves with any special stake concerning the treatment of their culture. When third-party-regarding reasons are invoked, it is everyone's interests, minority and majority alike, that are said to be burdened. When the appeal is to impersonal reasons, the setback is to the universe, so to speak, and not to any particular person's interests or well-being. Since so much of the debate about cultural rights revolves around whether cultural rights are owed to minorities, it is worthwhile exploring this question in its own right.

To be sure, an exploration of impersonal and/or third-party-regarding reasons would also be an interesting exercise. For what it is worth, I am skeptical about whether a satisfactory account of cultural accommodations could be constructed on the basis of these categories. In each case, the losses and benefits that are invoked seem rather weak. Consider first the third-party-regarding reasons. The general benefits they point to—such as a greater diversity of options for all to choose from—are genuine goods, but it is far from clear that liberal principles require that they be provided. Individual autonomy does depend on the availability of what Mill calls a “variety of situations” and Raz terms an “adequate range of options.” But an adequate range of options is not the same as a maximal one. At a certain point, additional options do not enhance autonomy, and even if they do, they do not enhance it beyond the point that the liberal state is committed to ensuring.

Moreover, even if adding options is something the liberal state is required to do in a given situation, it does not follow that extending cultural accommodation is necessarily the best way of going about it. Once one adopts a third-party-regarding perspective, one should be tough-minded about which policies will best produce the general benefits being sought. Accommodation policies involve money, time, political energy, and institutional capacity, and they have to translate somehow into accessible options if they are to produce the advertised benefits. Perhaps these resources would produce even greater general benefits if they were used differently? Investments in the arts and education, and support for civil society and for research and development efforts

by the private sector, seem like alternative ways of encouraging a greater diversity of options. It is not enough for proponents of the third-party-reasons approach to show that cultural accommodations would produce some general benefits. They have to show that those accommodations would produce *greater* (or at least equivalent) benefits than any alternative, permissible use of the resources that would be expended.

The weightiness of impersonal reasons also seems contestable. It is true that we have powerful reasons not to tear down centuries-old cathedrals or to despoil the Grand Canyon. Although, at first glance, the strength of these reasons seems to suggest that impersonal reasons can be weighty, this initial impression is misleading. It fails to factor out the personal reasons we have for conserving such wonders, such as the value for present and future people of experiencing them.<sup>28</sup> Once these personal reasons are filtered out, it is not clear that any particularly urgent reason is leftover. Imagine that at some considerable expense to contemporary society a number of special rockets could be launched into space that would collide with one another (or with something else) on the far side of the galaxy to produce an extraordinary (and long-lasting) visual effect of the most unique kind. Unfortunately the effect will occur so far away, and so far into the future, that no human being (or sentient being, for all we know) will be able to experience it. From the point of view of value in general, there might be a pretty strong reason to develop and launch the rockets. But from our perspective, this reason does not seem especially weighty. It looks like the sort of reason that people might voluntarily act on using their own resources, in something like the way that private associations undertake costly projects for religious reasons (building cathedrals, etc.). What we do not have here is the sort of reason that it would be right to invoke (even by a democratic majority) to justify imposing significant costs on people against their will.

The weakness of both the third-party-regarding and impersonal reasons can be seen in another way. Both reasons point to ways in which it would be good if a culture is preserved. Preserving a culture, as we shall see in chapter 2, means that current members need to make decisions to participate in certain institutions and practices that transmit the culture to new generations. If they do not make those decisions (for whatever reason), the culture is doomed to disappear. It seems, then, that members of the culture have a special role to play in preserving the culture, and thus in producing the benefits that others enjoy or that are valuable in an impersonal sense. If these benefits are truly substantial, then one might expect the members of the culture to have a duty

<sup>28</sup> Scanlon (1998, 220) notes that the personal reasons may derive their force, in part, from the impersonal value that is at stake. The fact that the Grand Canyon has great impersonal value may help to explain the strength of the personal reasons people can claim to have the opportunity to visit and admire it. I don't make much use of this point in the chapters to follow, but I think it is broadly supportive of the thesis I defend. Insofar as cultures and languages have impersonal value, this strengthens the claims of people who want to enjoy and participate in them. It is all the more important that these claims get their due.

to carry on their culture. But many people would resist this conclusion. They think that cultural minorities ought to have the option to preserve their culture if they want, but that they have no duty to do so. This last idea is hard to reconcile with the suggestion that third-party-regarding and/or impersonal reasons are especially weighty.<sup>29</sup>

For all these reasons, I will concentrate on exploring the case that can be made for minority-regarding reasons of basic principle. Of course, it may turn out that there are no such reasons, in which case, if there are *any* reasons of basic principle, they would be third-party-regarding or impersonal ones. But the latter categories of reasons seem shaky enough that it is worth devoting some sustained attention to the question of minority-regarding reasons.

#### REQUIRED NOT PERMISSIBLE

One more distinction that is helpful for locating my claim is the distinction between requirement and permission. In general, a policy is required if a failure on the part of some decision-making body to adopt it would give rise to a legitimate complaint of justice. Given the previous distinctions, I am obviously especially interested in cases where the complaint is principled, basic, and minority-regarding. In these cases, when the policy is required, cultural minorities have a *right* to the policy—what I have been terming a “strong cultural right.” A policy is permissible, by contrast, so long as, in adopting it, a decision-making body would not give rise to a legitimate complaint of injustice (of any sort).

Virtually all policies contain at least some provisions that are not required from the point of view of normative principle. The implementation of normative principles involves all sorts of conjectures and judgment calls, which reveal themselves in variations from decision maker to decision maker and from jurisdiction to jurisdiction. Given that disagreement about these judgments and conjectures is often reasonable, people do not necessarily have a legitimate complaint of justice if a particular principle is not implemented in the way that they would have preferred. Within a range, several different courses of action are permissible. There may also be reasonable disagreements about certain principles themselves. Rawls argues, for instance, that “there are many liberalisms and related views, and therefore many forms of public reason specified by a family of reasonable political conceptions.”<sup>30</sup> The core commitments of liberal thought can be interpreted in different ways and can give rise to different substantive principles.<sup>31</sup> Where there is reasonable disagreement about

<sup>29</sup> See Kymlicka 1995, 122–23; Weinstock (2003, 255–56) also makes this point in a slightly different context.

<sup>30</sup> Rawls 2005, 450.

<sup>31</sup> *Ibid.*, 451.

principles, a zone is established in which decision makers have permission but not an obligation.<sup>32</sup>

If the permissible exercise of discretion is a normal part of policy making, however, then so is conformity with certain obligatory principles of justice. If liberal arguments about civil and political rights are sound, for instance, then disagreement about whether these rights should be protected is not reasonable. Of course, there may be a variety of institutional means of protecting such rights, and it is possible that there could be legitimate disagreement about which of those means is the most effective. But *that* disagreement is heavily constrained by the requirement to protect the right that is being implemented in the first place.

Virtually every policy involves some permissible exercise of discretion, as well as some boundaries, more or less tightly drawn, that are required by justice. In this book, my focus is mainly on the question of requirements. My claim is that, under a range of standard conditions, particular forms of accommodation and recognition are a requirement of liberal justice in something like the way that civil and political rights are such a requirement.

Against this focus on requirements, it is sometimes objected that there is a deep tension between democratic politics and the idea that justice might require some policies. Suggesting that the leading theories of language rights are “allergic to politics,” David Laitin and Rob Reich maintain that “there is a large and desirable area of indeterminacy where liberal principles offer no clear prescription in regard to language policy.”<sup>33</sup> What makes this area “desirable” is, in part, the fact that it offers a space for the exercise of democratic politics. The implication is that political theorists who lay too much emphasis on articulating normative requirements are preempting a discussion that should really be conducted and decided democratically. A related suspicion is that there is something objectionably “juridical” about the enterprise of laying down requirements of justice (cultural or otherwise) for everybody.<sup>34</sup> This enterprise looks doubly problematic when it is observed that, rather like the judiciary, professional political philosophers tend to come from fairly privileged, majority-culture strata of society, and the principles they come up with may, in subtle ways, be colored by that background. Why then should we treat those principles as having any special authority? Would it not be preferable to generate the relevant principles “politically,” through an inclusive, democratic process?

<sup>32</sup>Carens 2000, 6–8, 28.

<sup>33</sup>Laitin and Reich 2003, 93; Laitin 2007, 114–15, 118.

<sup>34</sup>Williams 1995. The idea that leading theories of justice are problematically “juridical” is a theme of Honig 1993.

These “democratic” objections to the enterprise of exploring normative requirements are confused about the proper relationship between normative political theory and democratic politics. We should distinguish between two questions that might be asked about cultural rights. The first concerns *authority*: who should have the authority to make decisions about the recognition and accommodation of cultural minorities? The second, by contrast, concerns the *substance of deliberation*: what substantive principles and normative criteria should guide the decisions of whoever it is that is legitimately tasked with making decisions about cultural rights?

Those who press the objections from democracy presume that the important question is the authority question. They argue that the democratic process should be the ultimate maker of decisions about cultural rights. Without filling in a conception of the democratic process, it is not clear what this answer to the authority question is meant to exclude. As a first approximation, we might take it as excluding government by bureaucrats, judges, and panels of professors.

Our question is not the authority question, however, but the substantive question. We are interested in whether there are any basic reasons of principle for thinking that minorities are owed accommodation and recognition. Indeed, for much of this book, the authority question is rather tangential to my concerns. I certainly do not mean to argue *against* the idea that the democratic process should have the ultimate authority to make decisions about cultural rights. The important point is that answering the authority question in a democratic way does not put to rest the substantive question. *Even citizens of a democracy need to address the substantive question.* Democracy is not just a mechanism for expressing raw, uninformed preferences. At its best, it is a process in which citizens try to decide what to think about the issues they face and then act (by voting, campaigning, protesting, etc) according to their best judgments. Given this understanding of democratic citizenship, it is wrong to think of democracy and political theory as somehow rival enterprises. There is a role for political theorists to contribute to the public discussion by seeking to clarify concepts and principles and to work out their implications. It is something like this aim that I have in mind when I set out to explore whether a justification can be given for strong cultural rights.

Against this attempt to reconcile political theory with democracy it might be objected that a properly “political” and “democratic” approach to thinking about cultural pluralism is bound to be more relational and contextual than an approach whose ambition is to elaborate a general theory. It is for this reason that the correct substantive test of legitimacy refers, not to some abstract general theory, but to actual public deliberations having an appropriate character. Actual public deliberations tend to be suffused with claims about relation-

ships, context, facts, and so on, to such an extent that general theorizing is a poor substitute or proxy.<sup>35</sup>

It seems to me, however, that this objection underestimates the extent to which people engaging in actual public deliberation appeal to general ideas of equality, liberty, neutrality, culture, and so forth, to make their case. There is a role for political theory, not as a substitute for deliberation, but as a reflective effort to clarify and evaluate the status of certain general kinds of reasons that are advanced with great regularity in actual debates. In this way, political theory serves, not as a proxy for democratic deliberation, but as a resource that those engaged in deliberation can draw upon to illuminate, and make more rigorous, their concepts and claims.

By now it should be clear that the main thesis I intend to defend is a rather demanding one. It would be easy to justify various cultural protections if one could help oneself to pragmatic as well as principled reasons, or derivative as well as basic reasons, or if one could limit the task to showing that such protections are permissible rather than required. Rather than take the easy route, for each of these alternatives I want to take the tougher of the options and argue that the case for policies of recognition and accommodation can still be made. Taking the tougher route should, I hope, make the argument more theoretically interesting. More important, if the argument is a success, it will make the case for minority cultural rights deeper and more robust than it would be if pragmatic and derivative considerations were admitted freely into the mix or if permission was all that was established.

Some readers might wonder if I have not chosen such a difficult trail that I cannot possibly make it to the top. It is one thing to announce a thesis that is counterintuitive—this can make the ensuing discussion more interesting—but quite another to embark on a quixotic attempt to demonstrate something that is obviously mistaken. A leading reason for skepticism of this sort has to do with the notion of “requirement” that I have been assuming, and with the related notion of “rights” (e.g., when I refer to “strong cultural rights”). To see the problem, and also to situate my claim against it, we need a fifth and final distinction—this time between context-dependent and context-invariant requirements.

#### CONTEXT-DEPENDENT NOT CONTEXT-INVARIANT

In general, the state is required to adopt a policy when it has a reason for so doing that is strong and urgent enough that it should pursue the policy even in the face of other valid, countervailing reasons. The distinction that I now

<sup>35</sup>For an attempt to articulate a “political” approach to thinking about cultural difference that is distinct from a “theoretical” approach, see Laden 2007; Owen and Tully 2007.

wish to introduce turns on the fact that a claim that some policy is required in this sense can be more or less robust in the face of variation in the background context. On the one hand, the claim might be valid in *any* context. In this case there are no possible background circumstances or mitigating conditions that would make the requirement invalid. It is often said that the requirement that states refrain from torture (and the corresponding right not to be tortured) has or approaches this level of absoluteness in that the validity of such a requirement is robust to great variation in background context. I call requirements of this sort “context-invariant.”

On the other hand, there are clearly some requirements that are valid under one set of conditions and not under another. I shall call these requirements “context-dependent.” Some of the rights enshrined in the *Universal Declaration of Human Rights* are best thought of as context-dependent in this sense. The declaration enumerates various socioeconomic rights that could plausibly be satisfied directly in some economic and social contexts but not in others.<sup>36</sup> For instance, simplifying somewhat, one might expect the right to “periodic holidays with pay” to be immediately binding in countries that have achieved a certain level of income and wealth but not in countries that have not. For countries in the first class, the requirement to guarantee holidays is robust: its validity does not vary, for instance, with year-to-year fluctuations in the economy, with the intensity of competition from foreign economies, with attitudes about work held by the majority cultural or religious group, or so on. But the requirement weakens as one crosses over the relevant threshold of income and wealth, and in this sense its validity does depend, to some extent, on context. In one sense, indeed, the requirement does not just weaken but disappears altogether: on balance, a state is not required to guarantee paid holidays when it falls below the relevant threshold. In a different sense, however, the validity of the requirement does not disappear. The underlying human interests that are served by paid holidays remain, and they continue to generate reasons for the state (and, in the case of human rights, for the international community). Under unfavorable circumstances, where the right cannot be directly fulfilled, these reasons continue to imply a set of goals and guidelines that are relevant to the eventual fulfillment of the right. For example, they count in favor of states selecting forms and models of economic development that would eventually be compatible with guaranteeing adequate paid vacation for all.<sup>37</sup>

<sup>36</sup>The *International Covenant on Civil and Political Rights* explicitly acknowledges the context-dependency of the rights that it specifies, allowing that “In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation.” See Beitz 2009, 30, for discussion of the fact that “not all of the human rights of contemporary doctrine can plausibly be regarded as preemptory.”

<sup>37</sup>I am influenced here by the discussion of “manifesto rights” in *ibid.*, 120–21.

To avoid misunderstanding, the distinction between context-invariant and context-dependent requirements is not entirely a matter of the strength of the requirement. The obligation to secure various socioeconomic conditions might be very strong and yet also context-dependent (in some contexts, scarcity or social conflict make it impossible to secure the conditions in question). To call something a requirement is already to say that there is a strong and urgent reason to perform it. Instead, the distinction I am pressing here concerns the robustness of the requirement: the extent to which a requirement remains in force with variation in background conditions.

If one thinks of strong cultural rights as highly robust or context invariant, then the strong cultural rights thesis is almost certainly mistaken. As we shall see at various points in the book, there clearly are circumstances in which states are not directly required to extend certain forms of recognition and accommodation to cultural minorities. Major examples of such circumstances include those in which recognition/accommodation would

- pose a serious threat to international and/or intra-state peace and security;
- create a space in which human rights violations are much more likely than they would be in the absence of such policies;
- have a significant weakening effect on the basic sense of social solidarity needed to support the provision of public goods and the protection of basic liberal values;
- consume the time and resources of the state to a degree that is disproportionate to the importance of such policies in a liberal-democratic framework; and
- make a significant contribution to the social marginalization and exclusion of members of the minorities in question, by fostering conditions under which members of those minorities will predictably lack the skills, capacities, and access to valuable social networks they need to be able to enjoy an adequate range of options across the different areas of human life.

These circumstances are not far away in some distant possible world but are likely to obtain in some places in the world as we know it today. If the strong cultural rights thesis really did embrace context-invariance, it would have to insist that the requirements of recognition and accommodation continue to have full force even in circumstances such as these, and this I take it would be highly problematic.

If the strong cultural rights thesis is understood to be context-dependent, however, this problem is averted. One can grant that there is no basic, principled requirement for states to recognize or accommodate minorities in circumstances such as the ones mentioned above, while still insisting that in other contexts there is such a requirement. To be sure, if one limited the va-

lidity of strong cultural rights only to extremely propitious conditions, then the thesis would start to look weak and uninteresting. But I shall be arguing for a middle-ground position in between these extremes. In the view that I shall defend, strong cultural rights are roughly comparable to the socioeconomic rights recognized as human rights. The cultural rights are certainly not context-invariant, but so long as certain thresholds are met (which I specify in various places throughout the book), they are robust to a variety of circumstances and conditions. The analogy with socioeconomic human rights holds in another respect too, in that, even if the context is such that a state should not adopt policies accommodating or recognizing some particular cultural minority, the reasons that count in favor of adopting such policies do not disappear. They are instead deflected into the goal of establishing conditions that are more propitious for the eventual adoption of the policies in question.

#### 1.4 The Main Argument of the Book

The core case I develop in favor of strong cultural rights revolves around two main claims. The first holds that the liberal state has a responsibility to be neutral toward the various conceptions of the good that its citizens affirm. The second claims that, in certain domains, the only way for the state to discharge its responsibility of neutrality is by extending and protecting specific minority cultural rights. Although various qualifications and provisos are introduced along the way, and the rights that are justified must defeat countervailing considerations, the argument demonstrates why, in some contexts, specific strong cultural rights are indeed a requirement of liberal justice.

The suggestion that minority rights might be grounded in liberal neutrality will immediately seem unpromising to many readers. As we have seen already, some political theorists claim that cultural neutrality is impossible and cite this impossibility as part of a justification for cultural rights. I want to claim the opposite. A liberal state can, in principle at least, be neutral between majority and minority cultures. And the possibility of this neutrality is not a reason for rejecting or ignoring minority rights but, in fact, carries with it the implication that certain minority rights ought to be recognized. In a range of situations, a state that is neutral toward culture is not one that takes no notice of culture, or disentangles itself from culture, but is one that extends equal recognition to each culture.

To make this argument, I elaborate a new conception of neutrality, which I call “neutrality of treatment.” The state treats two or more conceptions of the good neutrally, I propose, when it is equally accommodating of those different conceptions. It is equally accommodating of two or more conceptions of the good, in turn, when, relative to an appropriate baseline, it extends the same forms of assistance to each and imposes the same forms of hindrance on

each. I argue that this understanding of neutrality is distinct from two more familiar views, which are known in the literature as “neutrality of intentions” and “neutrality of effects.”

The new conception helps to make clear why it is a mistake to equate neutrality with indifference (taking no notice) or disentanglement, and why equal recognition of majority and minority cultures is a form that neutrality can take. Indeed, I argue that equal recognition is often the *only* form that neutrality of treatment can take for a range of decisions that a state must take about what I call the “format” of its institutions—the language, symbols, boundaries, and so on, that are associated with those institutions.

By developing a distinctive conception of neutrality defined in terms of “treatment,” I shall also be in a position to address a different challenge, which is that many theorists now question whether neutrality belongs in the pantheon of liberal principles at all. By showing that neutrality of treatment is not a species of neutrality of effects, I avoid reliance on a view that liberal political philosophers have quite rightly disavowed. My defense of neutrality of treatment also avoids a claim that has got neutrality of intentions into trouble in some situations, namely, the claim that the liberal state has an *obligation* to be neutral. In the view that I defend, the liberal state has a strong presumptive (or *pro tanto*) reason to be neutral, but that reason is potentially outweighed (although never totally erased) by countervailing considerations. Departures from neutrality do not necessarily indicate an injustice. But there *is* an injustice if a state departs from neutrality without a sufficiently good reason. This *pro tanto* character of my basic claim about neutrality carries forward into the analysis of minority rights. I do not claim that a failure to extend such rights is always a form of injustice. Sometimes there are urgent and weighty liberal reasons for insisting on greater cultural uniformity in public institutions, although the aim of creating conditions that allow for the recognition and accommodation of difference never slips entirely from view. What I do claim is that there is an injustice when minority cultural rights are refused without a sufficiently good reason.

At a more fundamental level, I shall seek to explain why neutrality of treatment deserves to be considered an important liberal value. I rely here on two key ideas. The first, which is taken for granted in the book, is the idea of a state that represents all its citizens. Liberal values exclude the notion of a *Favoritvolk*, a privileged religious or cultural group that is given special concern or respect by the state. At some sufficiently abstract level, the state ought to be equally responsive to the interests of all its citizens.

The second idea says something more specific about one of the interests to which the state ought to be responsive. Of the several interests that citizens have, one of them is an interest in self-determination. This is the interest that a citizen has in being able to pursue and enjoy the conception of the good that he or she happens to hold, so long as that conception is permissible and at least

minimally worthwhile. This interest, I argue, is a weighty one, especially as it pertains to conceptions of the good, or components of such conceptions, that have certain features. When a preference occupies a pivotal role in a person's conception of the good, or when it has a nonnegotiable character, or when it is salient to the individual's enjoyment of the recognition and respect of others, then there is reason to think that the individual has a particularly strong interest in being able to fulfill that aspect of her conception of the good. Cultural aspects of a person's conception of the good often possess one or more of these features, and thus persons normally have a weighty interest in being able to fulfill their cultural values.

Putting these two ideas together: the state's abstract obligation to be responsive to the interests of all its citizens implies a more concrete obligation to extend a fair opportunity for self-determination to all its citizens. This more concrete obligation is the basis of the state's pro tanto reason to extend neutral treatment to the various conceptions of the good valued by its citizens.

An important feature of my position is that the rights I defend are not rights to cultural preservation nor indeed to any particular cultural outcome. They are rights to equal accommodation and, hence, equal recognition. What cultural outcomes emerge out of such a framework will depend on the preferences, choices, interactions, etc., of the various citizens acting within the framework. It might be that some cultures flourish and others struggle or even disappear altogether. If a framework of equal recognition, together with other conditions of liberal justice, is in place, then the outcome is just whatever it is. In addition, the specification of the framework of equal recognition is not itself predicated on a goal of producing any particular outcome but instead is grounded in an independent idea of fairness. So, in the view I defend, outcomes play neither a direct role (justice does not require any particular outcome to be realized) nor an indirect one (the conditions that make up a justice-conferring framework are not based on the goal of realizing any particular outcome).<sup>38</sup> I call this outcome-independence of the position its "proceduralism." John Rawls argued that, by establishing fair background conditions, the basic institutions of society set up a system of "pure procedural justice" in which any outcome that arises could be considered just by virtue of

<sup>38</sup>Most leading theories of liberal multiculturalism avoid a direct appeal to outcomes. They defend rights to cultural options, not duties to preserve cultures. But, unlike the approach developed here, many do rely indirectly on outcomes. For instance, both Kymlicka (2001, 213) and Van Parijs (2011a, chap. 5) endorse Laponce's "territorial imperative" argument, which has as its premise the desirability of language preservation (see sec. 6.9). And Kymlicka's "context of choice" argument (which other theorists echo) is naturally construed as a point about outcomes, not unfairness of procedures (see chap. 3 below). It points out a potential threat to autonomy that liberals would normally be concerned to avert, even if they wouldn't forcibly avert it by locking people into a culture against their will. The theory developed in this book does not derive its content from assumptions about which cultural outcomes it would be good to produce or avert.

the background conditions under which it came about. Rawls believed that the various institutions implied by his two principles of justice were sufficient for procedural justice in this sense.<sup>39</sup> One way to think about my project is to see it as proposing equal recognition as an additional element that ought to go into a satisfactory specification of fair background conditions, when thinking about procedural justice under conditions of cultural diversity.

In working out this account of strong cultural rights, I do not suppose that I am adding some entirely novel form of justification to the existing arguments made by liberal culturalists. There are clearly important continuities between the “identity” and “neutrality” arguments that I described near the beginning of the chapter and the case that I have just been sketching.<sup>40</sup> (A version of the “freedom” argument also makes several appearances in the book as well, especially in chapters 3 and 6.) What my argument does contribute, I hope, is a restatement of the ethical foundations of liberal culturalism that is deeper and more secure than the existing approaches and that responds to, or allows a response to, some of the standard objections against such a view. If my argument is successful, it should be clearer than it was before how the considerations

<sup>39</sup>Considering whether his theory of justice as fairness is “fair to conceptions of the good” that struggle for survival and success, Rawls (2005, 198) writes: “The objection must . . . hold that the well-ordered society of political liberalism fails to establish, in ways that existing circumstances allow—circumstances that include the fact of reasonable pluralism—a just basic structure within which permissible forms of life have a fair opportunity to maintain themselves and to gain adherents over generations. But if a comprehensive conception of the good is unable to endure in a society securing the familiar equal basic liberties and mutual toleration, there is no way to preserve it consistent with democratic values as expressed by the idea of society as a fair system of cooperation among citizens viewed as free and equal.” My account preserves the procedural character of this response to the objection—what matters is “fair opportunity,” not the actual success of conceptions of the good—but proposes that “equal liberties” and “mutual toleration” can (and should) be supplemented explicitly with a requirement to extend equal recognition consistent with a concern for democratic values.

<sup>40</sup>The best early statement of a neutrality-style argument is the account of evenhandedness in Carens 2000, 8–14, 77–87; also 1997. Carens equates neutrality with a “hands-off” approach to culture and identity and contrasts this with an evenhanded approach that involves “a sensitive balancing of competing claims for recognition and support” (12). My account is much indebted to Carens, but there are several differences worth noting. Most obviously, there is a semantic difference: whereas Carens opposes evenhandedness to neutrality, in my account evenhandedness is one of three possible forms that neutrality can take. More substantively, there is a difference of structure between the two accounts. Carens regards evenhandedness as an overall approach to fairness and thus admits a variety of different considerations into the “sensitive balancing” that goes into determining what evenhandedness involves in a given case. In my account, by contrast, neutrality has a more specific structure based on the idea of equal accommodation. It is a pro tanto obligation of the liberal state, and other factors and considerations enter in as potentially competing (or strengthening) reasons. Most important, my account tries to go quite a bit further than Carens in exploring the foundations of neutrality and evenhandedness in liberal principles and commitments. I try to take seriously skepticism about neutrality and devote considerable space (especially in chap. 4) to explaining why neutrality is an appealing idea and how it is rooted in liberal commitments. All three of these differences are in the spirit of Carens’s own remark that he has “not yet worked out a general theoretical account” of how neutrality and evenhandedness are related to one another (14). My own earliest sketches of the equal recognition approach are in Patten 1999c; 2000.

adduced by the identity and neutrality arguments are grounded in liberal principles and thus why it would be problematic for somebody committed to such principles to reject them.

As a related payoff, my approach contributes a distinctive perspective on some important policy questions relating to cultural justice. In policy discussions, the default assumption of many defenders of minority cultural rights is that the point of such rights is the preservation of vulnerable minority cultures. The policy recommendations are oriented to that goal, and so is the assessment of whether a particular policy is successful. If a given policy is failing to secure a culture's preservation, then, in a standard view, one ought to conclude that it is not doing enough.

The theory that I develop, by contrast, has a rather different set of implications for policy. The point of cultural rights is not to guarantee the preservation of any particular culture but to secure fair background conditions under which people who care about the survival or success of a particular culture can strive to bring about that outcome. The policy recommendations are geared, then, toward establishing fair background conditions (through equal recognition), not to securing a particular outcome. From the fact that a particular culture's preservation is not secured by equal recognition, it cannot be inferred that that policy is a failure. The relevant question in assessing a policy regime of equal recognition is whether recognition is truly equal. Are public policies structured in a way that is evenhanded between majority and minority cultures, or is there some kind of bias in favor of the former?<sup>41</sup>

As noted earlier, another tendency in existing debates is to elide the protection of minority cultural rights with the accommodation of substate minority nationalism. This tendency is quite explicit in some of Kymlicka's writings. In certain of his formulations, a leading rationale for minority rights is to offset the nation-building efforts of a state's national majority. Since the national majority uses the national government to engage in forms of nation building, substate national minorities should have, as a matter of fairness, the right to use the governments of subnational units for minority nation building. In other places, this tendency to "nationalize" minority rights is a consequence of the previous tendency, the tendency to think of cultural preservation as the point of cultural rights. It is argued that preservationist projects face a kind of "territorial imperative." To have any hope of preserving a culture, a group

<sup>41</sup>The distinction between preservation and equal recognition is relevant to an evaluation of Canada's official languages policy. Critics have sometimes assumed that preservation is the metric of success and have pointed to high levels of assimilation among Francophones outside of Quebec as evidence that the policy is not working. For reference to this view, see McRoberts 1997, 204–5; Kymlicka 1998a, 133. Equal recognition offers a different lens through which to evaluate the policy. Facts about assimilation are not by themselves indications that the policy is failing. What matters is whether the two languages truly are recognized equally in various contexts.

must, in effect, be a national group, endowed with its own territory, and with ample control over, and domination of, that territory.

In contrast with these existing accounts, the approach developed in this book attempts to denationalize the nature and content of minority cultural rights. Such rights are not, in general, rights to engage in nation building but in fact place constraints on the legitimate forms of nation building that any level of government can pursue.<sup>42</sup> Cultural minorities are not neatly concentrated into homogeneous territories but typically live, to some extent at least, side by side with members of the majority. There are territories in which national minorities form local majorities, but those territories are also typically home to members of the national majority who find themselves in the local minority, as well as to other minorities. In general, the obligations of fairness that ground the idea of equal recognition apply to all levels of government, and thus there is no reason to think either that the state as a whole belongs to the national majority or that substate jurisdictions containing concentrations of the minority somehow belong to that minority. The exclusion of a *Favoritvolk* goes all the way up, and all the way down. Since the point of cultural rights, in my account, is not cultural preservation, there is also no reason to nationalize such rights based on a territorial imperative.

So minority rights are not to be equated, in my account, with rights to engage in minority nation building. In this respect, the account developed here challenges the prevailing tendency to see a close connection between minority cultural rights and liberal nationalism. In two further respects, however, the account I propose is compatible with insights highlighted by liberal nationalism. First, the account can allow that there are sometimes legitimate reasons for governments to engage in nation building geared around the majority's culture. I mentioned earlier that the claims of minorities might sometimes have to be balanced against considerations based on values such as social solidarity, social mobility, and administrative efficiency. It may be that an energetic program of majority nationalism can be justified on the grounds that it is the best means of securing these values, even though such a program entails the nonneutral treatment of minority cultures. As I argue in chapter 5, how-

<sup>42</sup>I do not want to exaggerate the disagreement here since Kymlicka and others do acknowledge constraints on legitimate nation building. For Kymlicka (2001a, 29; see also 2001b, 27; Norman 2006, 56, 166), "all else being equal, national minorities should have the same tools of nation-building available to them as the majority nation, subject to the same liberal limitations." Still, I think there is a difference that will emerge in this book between two variants of the liberal approach to minority rights. For Kymlicka, and for those who follow him in this respect, a major rationale for minority rights is to give national minorities an equal opportunity for nation building. The limitations Kymlicka seems to have in mind are fairly minimal. He says that liberal principles preclude "ethnic cleansing, or stripping people of their citizenship, or the violation of human rights" (2001a, 29; for a fuller catalog, see Kymlicka 2001b, 54–58). As noted in the text, the view I develop is mainly concerned with limiting nation building by circumscribing the range of contexts in which it is acceptable for government (at any level) to favor the majority's culture.

ever, I do not think that such a trade-off is invariably justified: there are difficult empirical and normative questions that would need to be asked about the degree to which the values in question are in fact jeopardized, the magnitude of the contribution to securing those values that would in fact be made by majority nationalist policies, and the precise respects in which minority cultures are to be treated nonneutrally. Even where this calculus does come out in favor of majority nationalism, a residue of the pro tanto considerations favoring neutrality remains. The residual value of neutrality directs the state to encourage conditions that make it possible eventually to honor the claims of cultural minorities (such as rethinking the content of the national identity and encouraging second-language acquisition).

The second respect in which my account can be reconciled with liberal nationalism is more speculative but less ambivalent. It seems possible that nationalism can take a sufficiently inclusive form that the concerns about disadvantaging and alienating minorities I have been highlighting do not arise in a significant way.

An inclusive brand of nationalism is, in part, one that hews closely to principles of liberal democracy. It leaves citizens space to hold their own beliefs and to pursue their own diverse projects. It does not connect full membership in the political community with ethnicity or religious affiliation. It affirms liberal rights and makes decisions through democratic procedures. And so on. But such a nationalism also acknowledges that there are multiple modes of belonging to the political community. It recognizes that for some the state-wide political community is a primary affiliation, while for others it is a more attenuated, perhaps more instrumental, connection. Such a nationalism need not eschew all reliance on particularity or emotion. As with any form of nationalism, it can adopt its own symbols, advance its own narratives, and foster feelings of pride and loyalty among citizens. But it is not sectarian, and it is not aligned to particular cultural traditions and symbols. It need not limit itself to purely generic symbols, such as the scales of justice, but there is no doubt that the public self-presentation of the inclusively nationalist state manifests a tendency toward the ecumenical and the evenhanded. A nice example of an inclusive symbol that illustrates both tendencies is the post-2001 badge of the Police Service of Northern Ireland. The badge evenhandedly incorporates images of the crown, the harp, and the shamrock and also features the more ecumenical symbols of the torch, the olive branch, and the scales of justice.

I do not argue that inclusive nationalism is easy to bring about, or even that there are many (or even any) examples of it in the world as we know it. The point is the more theoretical one that the ideals of neutrality and equal recognition that I develop in the pages of this book are not necessarily “post-nationalist” ones, if that implies a sharp break with nationalism in all its forms. A recognizable nationalism of sorts can still be realized in a state that commits itself to those ideals.

## 1.5 Overview

The core argument about neutrality and equal recognition that I have been describing is mainly developed in chapters 4 and 5. Chapter 4 examines the idea of liberal neutrality in isolation from the book's more narrow concerns with cultural justice. It introduces and defends "neutrality of treatment." Chapter 5 then explores the implications of neutrality of treatment for the justification of minority cultural rights. It is in this context that I distinguish between procedural and nonprocedural accounts of cultural justice and, within the former category, between "basic" and "full" liberal proceduralism. The major argument is that neutrality of treatment mandates the latter form of proceduralism, which incorporates a concern for what I term "equal recognition." The second half of the chapter considers and responds to several objections to this defense of cultural rights.

Although chapters 4 and 5 present the core argument of the book, other chapters set up and fill out that argument and add important additional ones as well. Chapter 2 considers a major threshold question that any contemporary account of cultural rights must tackle. According to a popular recent line of argument, any attempt to develop a case for strong cultural rights is scuppered from the outset. The problem has to do with the concept of culture itself. Drawing on the well-known critique of essentialism, the contention of a number of commentators is that there is no defensible way of identifying distinct cultures, or of determining how they are faring, that is consistent with the normative agenda of multiculturalism.

The ambition of chapter 2 is to respond to this threshold objection to the project by developing a conception of culture that can withstand the essentialist critique, while at the same time providing a basis for the normative claims made later in the book. Culture, in the view proposed in the chapter, is what people share when they have shared subjection to a common formative context. A division of the world, or of particular societies, into distinct cultures is a recognition that there are distinct processes of socialization that operate on different groups of people. Since culture in this view is the precipitate of a common social lineage, I refer to this as the "social lineage account" of culture. Although there may be some weak sense in which the social lineage account remains "essentialist," I argue that it is not essentialist in an objectionable manner. It is compatible with, and indeed helps to account for, the patterns of heterogeneity, contestation, hybridity, and so forth, that commentators have rightly emphasized in pressing the essentialist critique.

The account of culture in chapter 2 also prepares the ground for an account of why culture matters to people. Why is it a bad thing for one's culture to disappear, or for one to be denied the opportunity to participate in some cultural practice? I take up this question in chapter 3, where the aim is to develop an account of why culture matters that is salient to the strong cultural rights

thesis. The main answer I consider is, in effect, a generalized version of the “freedom argument” mentioned earlier. The thought is that it is bad for people to lose their culture, or to be denied certain cultural opportunities, because the options that are open to them are thereby diminished in an unacceptable way. I argue that any account of this form is vulnerable to a dilemma, and that an important implication of the dilemma is that strong cultural rights should not be thought of as rights to cultural preservation. The dilemma does, however, leave scope for the neutrality-based, proceduralist argument developed in chapters 4 and 5.

Chapters 6 and 7 work out further the general model developed in chapters 4 and 5 by considering two particular areas in which minority rights have been contested. Chapter 6 explores the justification of minority-language rights. The main existing approaches to language rights—which I term the “nation-building” and “language preservation” models—each understand language policy making to be primarily a question of what might be called “language planning.” The policy maker, or institutional designer, identifies some desirable outcome—language convergence or language maintenance—and then determines how public institutions can best help to realize these outcomes. Building on the idea of liberal neutrality developed in chapter 4, chapter 6 introduces a third approach to language policy—the “equal recognition” model. The distinctive feature of this approach is its rejection of language planning. The task of language policy is not to realize some specific linguistic outcome—be it convergence on a common public language or the survival of minority languages—but to establish fair background conditions under which speakers of different languages can strive for the survival and success of their respective language communities. Following the argument of chapter 5, I claim that, in general, fair background conditions are realized only when the state extends certain minority rights to speakers of minority languages. Overall the chapter defends a hybrid approach to the justification of language rights, which draws on each of the three principal models. A concluding section of the chapter discusses some of the distinctive policy implications of adopting this perspective on language rights.

Chapter 7 then turns to the problem of self-government rights. To what extent do national minorities have a legitimate claim on some form of self-governing autonomy within a multinational state? When, if ever, does this claim—or its frustration—support a further claim to independent statehood? By drawing on the idea of equal recognition, the chapter develops a distinctive way of thinking about the justification of multinational federalism and other forms of autonomy for substate national groups.

The chapter explores this issue in the context of a further question that has been debated by normative political theorists in recent years—the moral status of secessionist claims. The two main views on this question have been the plebiscitary theory and the remedial rights only theory. The former re-

gards a secessionist claim as morally legitimate if and only if it is democratically mandated and is consistent with a set of further conditions (e.g., respect for liberal rights), none of which involve protecting or respecting schemes of self-government for national minorities. The remedial view maintains that a group's secessionist claims are morally legitimate only if the group has been the victim of injustice at the hands of the state.<sup>43</sup> In Allen Buchanan's influential version of this theory, a right to secede is given only to those groups that can (1) reasonably complain of a pattern of serious human rights violations at the hands of the state, or (2) establish that they were unjustly incorporated into the state.<sup>44</sup> Drawing on the idea of equal recognition, chapter 7 attempts to chart a middle course between the plebiscitary and remedial (as formulated by Buchanan) approaches. My proposal does not require that the seceding group be able to demonstrate that it has been the victim of one of the forms of injustice highlighted by Buchanan. A right to secession *can* be claimed against "minimally just" states (i.e., states that satisfy Buchanan's conditions). Against the plebiscitary approach, however, I argue that, under certain fairly common conditions, a democratic mandate does not generate a right to secede from a flawless state. For such a right to be generated, there must be *either* a violation of the conditions of minimal justice à la Buchanan *or* a distinct failure by the state, a failure of equal recognition. Where a state avoids both of these kinds of flaws, it need not worry about legitimate secession: a democratic mandate does not, on its own, generate a right to secede.

Finally, chapter 8 examines a more general problem that arises with respect to minority cultural rights, including both language and self-government rights. The problem arises from the fact that most states are home to dozens, even hundreds, of cultural groups. Their members speak different languages, have different practices and traditions that they want to maintain, and, in some cases, would like for their group to enjoy some autonomy over its own affairs. Some cultural rights claims do not come with a great deal of cost and could conceivably be granted to all such groups. This is especially likely to be the case for rights that are "derivative" in character (to use my earlier vocabulary) but may even apply to some that are "basic." Many strong cultural rights could not, however, be universalized to all claimants without risking grave damage to other legitimate public purposes and priorities. To extend a full set of language rights or self-government rights to every group that claims them may cripple the liberal state's ability to pursue its legitimate objectives. In these cases, some principle is required for deciding which cultures ought to enjoy a full set of strong cultural rights and which should not.

<sup>43</sup>Buchanan 1997; 1998a; 2004.

<sup>44</sup>Buchanan 1997, 37. As I discuss in the chapter, Buchanan (2004) subsequently added a third condition that is triggered when states violate intrastate autonomy agreements. This condition moves in the direction of the account I defend but still falls short of it in a way that I shall explain.

Chapter 8 considers two different approaches to this problem. The first attaches categorical significance to the distinction between “national” and “immigrant” groups. It argues that, in areas where universalizing rights is impossible, some priority ought to be extended to the claims of the former over those of the latter. This priority is grounded in the idea that immigrants waive certain kinds of claims on cultural rights as a condition of admission into the receiving state. The second answer proposes that one or more general principles be made the basis for determining the allocation of cultural rights. By “general principles,” I mean principles that attach no weight to the fact that a group is immigrant or national but instead decide on the basis of criteria that could, in principle, be associated with either sort of group (e.g., group size).

Will Kymlicka is famous for defending a version of the first answer, and, in the critical reception of his work, few of his arguments have been subjected to more repeated or intense criticism.<sup>45</sup> Chapter 8 discusses some of the weaknesses in Kymlicka’s position but argues that the sort of answer that Kymlicka offers (in favor of a limited immigrant/national group dichotomy) can be defended. The argument as I develop it rests in part on a reconsideration of what it would take for immigrants voluntarily to waive their rights. A key claim is that the standard of voluntariness ought to take into account the degree to which it is reasonable to impose the particular conditions that are attached to the provision of the benefits in question. A further part of the argument consists in suggesting that, for a limited class of cultural and linguistic rights, a liberal society is acting permissibly and reasonably in prioritizing the claims of national minorities over those of immigrants. I thus offer a reappraisal of Kymlicka’s controversial theory that immigrants voluntarily relinquish their cultural rights, one that is meant, not as an interpretation of Kymlicka’s original intentions, but as a proposal that stands on its own feet and, indeed, gains some of its plausibility through disentanglement from other elements of Kymlicka’s theory.

<sup>45</sup>Kymlicka 1995, 95–100. For the critical reception, see references in chapter 8 below.