

Populist Multiculturalism:

Are there Majority Cultural Rights?

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Introduction

For several decades now, multiculturalism has been a focus of both political action and academic scholarship. Typically, the advocates of multiculturalism have framed their project as a defense of the rights and claims of minority groups – including racial, ethnic, linguistic, and religious minorities (Taylor 1992; Kymlicka 1995a, 1995b; Patten 2014). Multiculturalists observe that the modern state has powerful majoritarian tendencies, which exclude and marginalize members of minority groups. States, including liberal democratic states, often seek to use law and public policy to promote a common national culture aligned with the culture of the majority. According to the key thesis advanced by multiculturalists, minority cultural groups have rights and claims that limit these nation-building aims of the modern state and that protect a space in which minorities can express, enjoy, and preserve their own distinctive cultures.

One question arising from the theory and practice of multiculturalism concerns its implications for majority cultures. In one sense, multiculturalism directly addresses majorities by pointing to limits on how far the state can go in promoting and entrenching the majority culture. But questions about majority cultures arise in another way as well. For one thing, in some cases it is unclear which group to count as the minority and which to count as the majority. Russians are in the minority in each of the Baltic states, but the titular ethnic populations of Estonia, Latvia, and Lithuania seem like tiny

minorities compared to the considerable Russian population of the broader region. It seems arbitrary to restrict theories of multiculturalism to minority cultures if the application of the labels – “minority” or “majority” – can flip so easily according to context and baseline.

A more fundamental reason for exploring the theory of multiculturalism’s implications for majority cultures is that the concepts, terminology, and arguments deployed by multicultural theorists in favor of minority rights sometimes seem relevant and applicable to the situations of majorities. Justifications of minority rights appeal to ideas such as “cultural preservation,” “recognition,” and “identity.” None of these ideas directly hinge on whether a particular group is in the minority or the majority and thus all seem potentially applicable to the situations of majority cultures.

Consider, for instance, the situation of rural Americans in many parts of the country. It is unclear whether to label them as a minority or a majority. Rural Americans are in the minority nationally, but form local majorities in some areas, and exercise a fair amount of influence over national political outcomes. What does seem apparent is that many rural Americans use a vocabulary familiar from multiculturalism to describe the challenges they face. They value their small-town-centered way of life, and partly define their identity with reference to their local community. At the same time, they feel that their way of life is beleaguered by economic, technological, and demographic forces outside of their control. And they feel that their fellow citizens – urban and coastal “elites” – look down on them, failing to understand or acknowledge the value of their way of life or the contemporary pressures that it is under. The discourse around rural America thus manages to overlap substantially with some of the central concerns of

multiculturalism. At their root, these are concerns with cultural preservation, identity, and recognition (Wuthnow, 2018).

Similar patterns of discourse are found in Europe, where some of the same economic, technological and demographic forces are at work. The demographic transformation of Europe occupies an especially prominent place on the current political agenda. On one hand, the current populations of most Western European countries are characterized by very low birth-rates. On the other, these very same countries receive high levels of immigration, especially from Africa and the Middle East. These changes leave many Europeans feeling as though their traditional ways of life are under siege, and that their identity will disappear if radical political action is not taken.

These anxieties about the fate of traditional majority cultures have not gone unnoticed by political theorists on the right, including those on the far right. The appropriation of the language of liberal multiculturalism by thinkers concerned to defend the prerogatives of traditional white, Christian cultures in Europe and America is a well-documented phenomenon (Williams 2017). As one commentator observes, “while multiculturalism in the United States and Canada is associated with democratic politics and inclusion, multiculturalism in France is [closer] to the ideology of the Far Right” (Jennings 2000, quoted in Spektorowski 2012: 47). The writings of new right French thinkers, such as Alain de Benoist and Renaud Camus – who have influenced the White nationalist extreme right – are full of references to the celebration of difference, ethnopluralism, identitarianism, and cultural preservation – all terms that would not seem out-of-place in the North American discourse of liberal multiculturalism.

One could see this recent trend as an example of the general tendency of complex ideas to be distorted and misused. Liberal theorists like Stephen Macedo (1995) and Brian Barry (2000) have long warned that multicultural arguments could be adapted by the chauvinist and racist right. But the reaction of many liberals was to complain that such warnings overlook the nuances and qualifications of liberal multiculturalism.

There is a lot of truth in this defensive reaction, but in this paper I seek to approach the problem from the other side. I want to start by being open to the idea that there are certain majority rights, and then try to identify what the basis of those rights is. This will put us in a position, in turn, to identify the limits of those rights. I shall argue that majorities do have certain rights and permissions with respect to the expression and defense of their culture. But these rights and permissions are grounded in very specific social circumstances and normative considerations and thus face very significant limits.

The argument I advance seeks to avoid two overly simplistic perspectives. The first is that majority rights are completely uninteresting, because one can always count on majorities to protect themselves using the democratic process. This view rests on a flawed understanding of the relationship between political theory and democracy¹. The main task for political theory is not to fill in when democracy cannot be relied on, and thus its work does not run out when democracy can be relied upon. Political theory can help democratic citizens think about what they *ought* to do. The questions about majority rights that I wish to explore are concerned with what the majority is morally permitted, or in some cases morally obliged, to do. It would not answer questions of

these kinds to note that the majority has the raw power to enact some decision. The problem is whether it is morally legitimate for the majority to use its power in this way.

The second perspective that I shall distance myself from holds that majority rights are problematic when and only when the majority is understood in “ethnocultural” terms. According to this view, majority groups with a civic culture are benign, and thus they are good candidates for rights, but cultures defined in terms of ethnicity are problematic in a pluralist society and should not be supported by rights. There is obviously something to this position: as liberal critics like Barry and Macedo make plain, the puzzle of majority rights is in part the puzzle of whether such rights could legitimately be claimed in some contexts without opening the floodgates to racist and chauvinist forms of majoritarianism. But ultimately I think it is not correct. On the one hand, as we will see below, there are cases where the majority ethnic group has legitimate rights. On the other, it will emerge that there are significant limits on the claims of even those cultural groups that do transcend ethnicity.

Who is the Majority?

An initial question is who exactly the “majorities” are that might be candidates for majority rights. As noted already, the concept of a majority is a rather slippery one. It is always relative to a presumed frame of reference and baseline. Setting aside the minority vs. majority question, a deeper problem is how to identify the underlying cultures themselves. Unless it can be determined which distinct cultures there are, it is impossible to make sense of claims that this or that culture is flourishing, disappearing, under threat, or so on. Relatedly, those who set out to preserve majority cultures

depend just as much as defenders of minority cultures on a method for distinguishing cases of cultural loss from cases of cultural change. Cultural preservationists do not typically object to cultural change – they do not claim that cultures should be frozen in their current form – but instead want to protect cultures from marginalization and disappearance (Kymlicka 1989: 167; 1995a: 104).

One approach to these issues inquires into how people identity themselves and one another. A distinct culture is present where people identity themselves and one another as being culturally distinct. But this approach can lead to some confusing, asymmetrical patterns. In one common kind of case, the minority has a strong sense of itself as being a distinct group, and a corresponding sense of others as belonging to the majority. If you talk to members of the majority group, however, they don't necessarily think of themselves as belonging to a majority group but rather simply proceed as if everyone – including the minority – belongs to a single group. For instance, Catalans might have a strong sense of themselves as a distinct minority, while Castilians simply think of themselves as Spanish.

This first pattern bothers minorities – who note that the majority's sense of the group as a whole tends to come adorned with majority cultural characteristics – but the second pattern is much more insidious. In this pattern, the members of the ethnic group historically associated with a state think of themselves as forming a distinct majority culture, and consider ethnically or racially distinctive fellow citizens to belong to distinct minority groups. While aware of having minority characteristics, members of the so-called "minorities" strongly self-identify as members of the national group, and might reasonably think that they have no other allegiance or object of national belonging. With

both these patterns, one sub-group thinks of itself as a distinct sub-group alongside some other sub-group, but the other sub-group does not think of itself as a distinct sub-group at all but tends instead to think of itself as part of the larger group.

One way of avoiding this conundrum is to identify socio-cultural groups on the basis of objective factors, and not just subjective identification. On this view, people who share a distinct culture have distinct social experiences, isolated to some degree from the broader society (Patten 2014: ch 2). Thus, the Catalans have a distinct culture because they share in common an experience of socialization that is not shared with others: they live in a distinct region and speak a distinct language, they are subject to certain political and administrative institutions that are not shared with other Spaniards, they have a history of cooperating with one another politically and economically, and so on. Rural Americans have a distinct culture if and to the extent that their lives are shaped by distinctive practices and institutions that are not shared with all Americans. And so on. This strikes me as the most promising approach to take, and it is consequential for our topic. For it opens up the possibility that some of the groups that intellectuals or political leaders claim to speak for do not in fact exist as distinct cultures. In today's multi-racial, ethnically plural, religiously diverse societies, there often is no majority ethnic group that has a sharply distinctive experience of socialization apart from the rest of the society. In this respect, the group of people who share majority ethnic characteristics is quite unlike, say, the Catalans or Québécois, who are concentrated in their own territory, and have their own languages, institutions, and history apart from the rest of their societies. Some majority rights claims have trouble getting off the ground, then, because the very existence of the distinct majority group on whose behalf the

claims are being made is in doubt. One threshold reason why multiculturalism offers no support for racist calls for protections of racially-defined groups is that, in general, racially-defined groups are not cultures in the sense that matters for multiculturalists.

Racist expropriations of multiculturalism also struggle with the distinction between cultural change and cultural loss. As I noted earlier, liberal multiculturalists do not object to all cultural change as such. Any society that protects basic freedoms will change over time, and there is nothing inherently wrong with this. Multiculturalists do sometimes frame their arguments in terms of cultural preservation, but what they object to here is the loss of culture. Elsewhere I have argued that cultural loss occurs when the current members of a culture lose control over the socialization of the next generation (Patten 2014: ch. 2). A local culture disappears for instance when the primary mechanisms by which new generations are socialized are national-level institutions and practices. The mere fact that a society is becoming more racially or ethnically diverse does not, on this view, imply cultural loss, though it may mean a cultural change. As long as the newcomers continue to be socialized by institutions and practices that are controlled by members of the culture, the culture persists, even if it changes in the process. So once again a motivating concern of many multiculturalists seems to diverge from the concerns of the racist right.

These remarks about culture and cultural preservation serve as a threshold objection to certain racist and chauvinist attempts to apply multiculturalism to the majority, but they are not meant to rule out all majority cultural rights claims. On my view, it is perfectly possible that there are sub-national cultural groups (defined in part by a distinct experience of socialization) who are numerically in the majority in a

particular political community and who find that their culture is unfairly treated or is vulnerable to marginalization, decline, or even extinction. There are also small national communities who feel their culture is vulnerable to decisions by outsiders – concerning migration, tourism, investment, land ownership, media and popular entertainment, and so on – and who believe that their distinctive culture is threatened as a result. This latter kind of case can be illustrated by a small, perhaps fairly homogenous nation-state (e.g. Iceland) whose citizens feel beleaguered by outside influences and seek to exercise certain rights to shape and control those influences.

Isolating the Problem

A very wide range of different phenomena might conceivably be thought of as threats to a culture. Consider the phenomenon of White nationalism in the United States. One thing to say about White nationalists is that their behavior and rhetoric is objectionable because it is incompatible with ideas of racial equality and individual freedom. But many Americans also experience White nationalism as an assault on their culture. They take their culture to be defined in part by the values of the U.S. Constitution, and believe that ideas of racial supremacy are a threat to those values. The same pattern can be seen in connection with religious extremists in Europe, e.g. those who evince a willingness to use violence to uphold their religion, who affirm extreme forms of gender inequality, or who call for theocratic rather than democratic forms of rule. These attitudes, where they are actually held, can be criticized on the grounds that they conflict with specific ideas of individual rights, liberty and equality. But, of course, those very ideas can plausibly be

described as integral to European culture, and thus the attitudes in question can also be seen as a threat to that culture.

If combatting racism or religious extremism are thought of as instances of cultural defense, then it might seem obvious that majorities have a right to defend their cultures. To deny majorities this right is to back into a kind of extreme relativism that liberals are sometimes accused of according to which they are not permitted to take a stand in defense of their own values and principles. But this is a confusing way of thinking about our topic. The justification for containing racism and religious extremism is not cultural protection. One reason (seen already) is that cultures can change. But even setting this aside, the objection to racism and extremism is not that those practices are foreign to our traditional culture, and we want to keep doing things the way we always have. Most people think there is a deeper and more important reason to oppose racism and extremism. Racist and extremist actions and attitudes threaten the rights, freedom, and equal standing of others in the political community. Put differently, even if commitments to anti-racism and anti-religious-extremism were not part of our culture, there would still be reasons to try to contain racism and extremism. Nor is it illuminating to think of anti-racist or anti-extremist policies as instances of *majority* rights. There would be the same reasons to oppose racism and extremism in a society where the majority is in fact racist and extremist.

I am not saying that it is wrong to describe anti-racist or anti-extremist policies as forms of cultural defense or as exercises of majority rights. There is little point in policing how people use words, even if the words obscure the deeper reasons for supporting these policies. Rather, the point is that we do not get much insight into the broader

permissibility of cultural defense, or into the topic of majority rights, by thinking about these forms of self-protection. There are special, if quite familiar, reasons for opposing racism and extremism that do not generalize to other cases where cultural preservation and majority rights are being debated.

One way to isolate the cases where cultural rights really do seem to be the issue would be to make an artificial assumption. Imagine that a society is successfully protecting a standard liberal package of rights, entitlements and procedures. Presumably, the standard liberal package would at least protect certain civil rights, economic opportunities, and democratic institutions. The exact character of this package might be contested – there is more than one defensible version of liberal democracy – and we can set aside those debates for another time. The question of majority rights that we should focus on arises against the backdrop of the successful realization of the standard liberal package. Suppose that, against that backdrop, the majority culture is struggling to flourish and survive. Under what conditions, if any, do members of the majority have a right to use law and policy to defend their culture?

Nation-Building

I will try to answer this question in a moment, but first forgive me for insisting on one further limitation inherent in the nature of our topic. There are situations where a state should go beyond the standard liberal package, and concern itself with the shaping of culture, but in which there is no majority right that it do so. Some cultural policies are not primarily based on the interests of the majority. Either they promote the majority culture

for the sake of minority interests, or they are concerned to establish a shared culture that majority and minority alike can benefit from.

Consider a state that has one main national language, and that enacts a series of laws and policies designed to get immigrants to learn that language. We can imagine a number of different rationales that might be offered for such an initiative:

(i) *It is good for the immigrants themselves.* It allows them to participate in their new society and to enjoy social mobility in it.

(ii) *It is good for everyone to have a common medium of communication.* A common language facilitates democratic deliberation, strengthens trust and solidarity, and reduces the costs associated with social interactions.

(iii) *It helps to protect the majority language.* In the absence of language acquisition policies targeted at immigrants, immigrants would make choices about language that work over time to undermine the majority language and the culture that is based on it.

The main point to make is that the first two rationales are not really claims of majority rights at all. They do not refer to the interests of the majority to justify the language policies in question, but either to the interests of immigrants and/or the interests of everyone – to the common good of all members of society. In general, there are a whole series of nation-building policies that are justified in these terms and are improperly thought of in terms of majority rights to cultural protection. Many nation-building policies

that are proposed are very controversial: some are unnecessary, some are unlikely to be effective, and others are incompatible with liberal democratic values. The point is simply that, when we argue about these policies, we are not arguing about majority rights.

Rationale (iii) does describe a situation in which majority cultural rights are at issue, but I think it is not a terribly common case, at least not with respect to language. A state that does a good job satisfying its immigrants interests in integration will normally be a state in which the immigrants, or at least their children, learn and routinely use the majority language, and thus one in which the majority language is secure. There are exceptions to this pattern, and I return to them below, but they are unusual.

Arguments for majority rights

With those numerous preliminaries now dispensed with, let me describe a series of cases in which I think there are reasons, grounded in the interests of majorities in defending their culture, that can justify majorities using their power to defend their culture in certain ways.

(i) Unequal recognition

In some states, there have been consequential periods of history in which the majority cultural group was subordinated to a dominant minority group. Even once the period of formal subjugation ended, and the political system was opened to all, there is

sometimes still a legacy from the era of minority domination. The minority may enjoy more recognition than the majority in some domains of public life. For example, the minority language may still enjoy currency as a lingua franca; the leading public universities may continue to be oriented to the minority population; the place- and street-names may still reflect the formerly ascendant group; the curriculum in the public schools may privilege the literature and history of the minority. And so on.

In recent times, a clear example is South Africa. The White minority was dominant in the Apartheid regime of pre-1994 South Africa, and even when the Black majority entered the formal political system and began electing rulers from their own ranks there was an enduring inequality of recognition of Black South African culture(s). In fact, many post-colonial cases have this character. A minority associated with the colonial power ruled for a period of time, and often managed to leave a cultural legacy for newly decolonized states. Upon independence, and perhaps for some time afterwards, the majority culture is less present in public institutions than the minority culture of the former colonial power.

In cases like this, it is plausible to think that members of the majority culture have a right to special forms of recognition and accommodation. Although this right will be manifested as a claim for recognition and inclusion by a particular group, it is grounded in a more general right to equal recognition: members of the majority culture can reasonably expect that public institutions give their culture as much recognition and accommodation as the formerly dominant minority culture enjoys. In the absence of equal recognition, members of the majority can claim that they lack a fair opportunity to express, enjoy, and sustain their culture.

As the South African example suggests, the majority group right-holder may well be defined in ethnic or racial terms. This is how they were defined and treated by the previously dominant minority, and this ethno-racial categorization worked to constitute the majority as a distinct culture. That categorization remains relevant to understanding the unequal recognition accorded to the majority. Thus, it is wrong, as a blanket statement, to say that majority rights, where they are justifiable, must be divorced from ethnic categories.

The basic logic of this argument for “equal recognition” can also be extended to arguments from reparative justice. Past injustice towards a majority cultural group might have caused an enduring lowering of the status of the culture, or a stigmatizing of members of the culture, that persists beyond the successful establishment of equal recognition (Spinner-Halev 2012). Again, this is a familiar pattern in post-colonial and post-white-supremacist societies, and in other less extreme cases as well. Even once relationships of equal recognition are finally established, the majority culture and its members may labor under this shadow of the past, and thus they may have rights of reparative justice to further recognition and accommodation of their culture beyond the point of equal recognition. At the same time, members of the formerly dominant minority culture may have forfeited their own rights to the equal recognition of their minority culture if they participated in sustaining the past injustice or if they have failed to implement reforms to elements of the culture that had previously supported or tolerated injustice.²

Consider, for example, a case where the majority local language was unjustly suppressed as part of a nation-building project adopted by the central government.

Even when equal recognition of the local language is restored, so that it enjoys equal status with the language of the statewide majority, this may not be enough to secure the local language against decline and marginalization. The history of suppression may have altered norms and habits of language use in ways that will eventually lead to the demise of the local majority language. An appropriate correction to this historical injustice may be to favor the local majority language in certain ways for some period of time.

(ii) Collective action problems

A second, quite distinct kind of case can arise even when the majority culture enjoys equal recognition and even when it does not labor under a legacy of past unequal recognition. It arises when members of the majority value the preserving of their culture, but face a collective action problem that undermines their efforts to do so. In this kind of situation, it is sometimes justified for the state to limit or regulate the choices that individuals can make in order to bring about the collective good – the preservation of the culture – that is valued by members of the group.

A number of real-world policy proposals might be considered from this perspective. In some societies, for instance Quebec and pre-1960s Belgium, the majority language is the lower-status, more vulnerable language because it competes with a language with high levels of international utility and prestige – English in the case of Quebec, and French in the case of Belgium. There is a widely shared desire within the vulnerable majority language communities to preserve the language, but individual members of those communities also face incentives that work against this goal. They

could give their children an extra advantage by educating them in the dominant language, or they could advance professionally through a readiness to switch to the dominant language in mixed settings. Since any particular individual's decisions about language acquisition or use will not make much of a difference for the health of the language as a whole, you have the classic ingredients of a collective action problem. Unable to make a perceptible difference to the collective good they value, individuals will pursue their private good, and in the aggregate this may undermine the collective good. Government regulations and restrictions that elevate the majority language over the minority one in certain respects may make majority speakers better off by their own lights.

One can see a similar logic at work in debates about property ownership and regulation. A position taken in some communities is that outsiders should not be able to purchase land from the community's territory. Some indigenous peoples go so far as to oppose private property altogether, in part out of a fear that individuals will exercise their property rights by selling to outsiders. At first glance, one might wonder whether it would be best to let individuals decide for themselves whether to sell to outsiders. But this would ignore the collective-action-problem structure of the situation. A related phenomenon is the recent "AirBnB-ization" of certain historic European cities, like Barcelona and Florence. No individual decision to set up their apartment as an AirBnB makes much of a difference to the historic cultural community. So even people who value their historic culture may find it rational to do so. But when large numbers of people do it, the impact may be substantial. Government regulations and restrictions in

this kind of context will strike many as a reasonable exercise of the majority's right to protect its culture.

There are some complexities and puzzles lurking in this kind of argument that need to be considered. In textbook accounts of collective action problems, everyone is assumed to have a preference ordering in which they prefer the outcome in which the collective good is provided and all endure some mild restrictions over an outcome in which everyone is free to do what they want and the predictable consequence is that the collective good is not provided. But most real societies are more divided than this. The collective good of cultural preservation might be valued by many people, but there are some who genuinely don't care about the culture. In these cases, the argument for majority rights needs to proceed cautiously. Simplifying a view I have worked out elsewhere (Patten 2019), I think we can say the following. On the one hand, it would be unfair if the efforts by the majority to secure the collective good were held up by a small number of people with different preferences, especially if the costs to those dissenters were not too great. On the other hand, if there are significant numbers of dissenters, and/or the costs that they would have to shoulder are significant, it would be unfair for the state to recruit them into securing a good they do not particularly value. They have their own lives to lead.

(iii) *Discretion*

My final kind of case is again quite distinct. In some situations, a community faces a choice that is rightly thought of as *discretionary*. By this I mean that there are a range of different decisions that the state could make without violating any presumptive moral

obligations either to its own citizens or to anyone else. When faced with a discretionary choice of this kind, it is permissible for the majority to use its power to direct the state to protect the majority culture.

Consider the following scenarios:

- A small European country that still has not joined the EU and is contemplating an offer to join the EU on fair and reasonable terms.
- A Native American group that has enjoyed a semi-sovereign status in the US or Canada and is considering fuller integration into a state or province
- Mexican or Canadian citizens debating trade liberalization with the United States.

These cases strike me as having at least a partially discretionary character to them.

There are limits – states should not knowingly expose their least advantaged citizens to major upheaval that will predictably make them even worse off – and there may be exceptions. But, in general, a people – ideally, acting deliberatively and democratically – can reasonably make a variety of different decisions in cases like these so long as it acts within appropriate limits.

Moreover, in each of these cases, it would not be surprising to find some citizens opposing the proposed change on the grounds that it would threaten their culture. It is not that they would necessarily be advocating the unequal recognition of the majority culture within their own political communities at the expense of minority cultures within those same communities. It might just be that remaining politically and/or economically separate might help to protect the majority cultures without any such official privileging of the majority culture. In part, this is because there are certain advantages that go with being the majority. When there is time or space for just one way of doing things, there is

a reasonable tendency to default to the majority. In government, professional, or corporate offices, there is often one main lingua franca, and the typical pattern is to default to the majority. There is only so much that can be taught in the history curriculum. A private television network will tailor its broadcasts to cater to the majority's interests and expectations. And so on.

In general, it strikes me as permissible for the majority to let a concern about cultural protection influence its decision in cases that have a discretionary character like those above. This is a kind of majority cultural right. Again, there are limits. The majority can't insist on remaining separate so that it can more efficiently oppress the minority or deny the minority equal recognition. And there may be forms of culture that are so deeply problematic – racist, sexist, etc. – that it is not permissible after all to object to political changes on the grounds that they would threaten the culture. But, in general, cultural protection seems to me a respectable reason for the majority to take into consideration, and one that it has a right to act on.

Are there other discretionary cases of this kind? The important theoretical point here is the existence of the category rather than the particular instances that fall into the category. That being said, I believe that a similar, perhaps more heavily qualified, argument could be made about a state's right to determine the level of immigration it will permit. For most states, completely rejecting all migrants would not be permissible. There are compelling cases of family reunification, and every state should do its part to assist refugees and those in economic need. More broadly, would-be immigrants have a range of different interests at stake in wanting to move to a particular place, and it would be wrong for a state to be indifferent to claims based on the weightier of these interests

unless it has a commensurately important interest of its own that it is defending (Stilz 2019, ch. 7). In addition, it is generally objectionable for states to selectively admit immigrants on racist or religious grounds. But within the space left by these constraints, I think states do have some discretion over levels of immigration. There is a class of would-be immigrants – for instance, those who want to relocate to a warmer, beach-front locale – who do not have a particularly weighty interest in immigration. Perhaps a state may not exclude such would-be immigrants for no legitimate reason at all, but it would not take a particularly weighty or urgent reason on the state's part to justify exclusion. In a situation like this, it is permissible for a state to consider the protection of the majority culture as a possible consideration. Citizens deciding how many immigrants to allow into their own society can legitimately consider the impact on their own quality of life, and the impact on their culture is one factor in this consideration.

This third category of cases where the controlling majority has some discretion is potentially quite a large one, and one question is whether it ends up swallowing up the second category involving collective action problems. Are cases where the state intervenes to overcome a collective action problem more straightforwardly analyzed simply as cases of discretion? I do not think so. In general, the law should be equally accommodating of different preferences and attachments; this idea of fair opportunity for self-determination is what lies behind the idea of equal recognition. Thus, in general, the controlling majority does not have it in its discretion to give more state support to (or impose fewer state burdens on) its preferred way of life over other ways of life: it should remain neutral. The existence of a collective action problem, as described earlier, is a special circumstance that justifies overriding this presumption of neutrality. The cases

described in this subsection, by contrast, have a different shape. There is not even a presumption in favor of neutral treatment that is overridden when the controlling majority makes a decision about borders, or membership, or immigration levels.

The limits of majority rights

The three key cases of majority rights I have described have substantial in-built limits dictated by their own logic. Unequal recognition cases are guided by an underlying norm of equal recognition. The rationale for majority rights is to correct and repair departures from the norm of equal recognition. Collective action problem cases depend on the presence of a particular structure of preference and choice, and face limits on the costs that can reasonably be imposed on minorities with dissenting preferences. Finally, the discretion cases are limited to situations where a state could make a variety of different choices without violating presumptive moral obligations to fellow citizens or to outsiders. The license to protect the majority culture in these special cases does not extrapolate to a more general right to protect the majority culture.

Why is there no more general right to protect majority culture? In his book on majority rights, *The Cultural Defense of Majorities*, Liav Orgad (2015) does argue for a more general right, although he mainly explores the issue in the context of immigration law. Orgad maintains that majorities have a right to use immigration law to protect their cultures in a broad range of cases that sweep beyond the three special cases I have described. For Orgad, majority cultural rights can be claimed by “victimized majorities,” which correspond roughly with my case of unequal recognition, but also by “diminishing majorities,” “regional-minority majorities,” and “minoritized majorities” (189-95). In effect,

majorities are candidates for cultural rights, on Orgad's view, whenever they are "vulnerable" in virtue of political or demographic factors or because of trends in migration (195).

Orgad endorses a broader range of majority cultural rights than I do because he starts out from a different understanding of the moral foundations of cultural rights. Orgad appeals to the well-known theory (associated with Kymlicka (1989, 1995a) that a secure culture is a pre-requisite for individual freedom. He also follows Margalit and Halbertal (1994) in supposing that there is a right to identity that is undermined by cultural loss (Orgad 2015, 195-96). For reasons that I have detailed elsewhere, I do not think that either of these defenses of cultural rights is successful (Patten 2014: ch. 3). Kymlicka's view suffers from the fact that individual freedom is not as dependent on the security of any particular culture as the argument supposes. The problem with Margalit and Halbertal's view is more normative in character: in short, there is no right to the successful pursuit or enjoyment of one's identity.

My view instead is that there is a right to *fair treatment* of identity. There is no right to cultural preservation, but there is a right that one's cultural attachments and commitments be treated fairly. Under standard conditions, this implies that each culture should enjoy equal recognition. This difference in normative logic accounts for the differing conclusions arrived at by Orgad and I. Orgad theorizes a quite general right to cultural preservation, sees no relevant difference between minority and majority cultures in their eligibility for such a right, and concludes that there are quite general majority cultural rights. I ground cultural rights in the idea of equal recognition and thus conclude that there are majority cultural rights only in contexts where a departure from equal

recognition needs to be corrected and repaired (unequal recognition), or where the presumption in favor of equal recognition is defeated by special factors (collective action problem) or where the claim to equal recognition does not apply (discretion).

The problem with generalizing a right to protect the majority culture beyond my three special cases is that such a right would deny equal recognition to minorities. The law would be less accommodating and/or more burdensome for minority cultures than for the majority. It would thus deny to minorities a fair opportunity for self-determination: a fair opportunity to pursue and fulfill the attachments and commitments that matter to them. With this final observation, we bring things full-circle back to the minority-regarding multiculturalism with which we began. The core of multiculturalism is the protection of spaces in which minorities can enjoy, express, and preserve their cultures against a state oriented to the concerns of the majority. The aim of the present paper has been to explain why modest, but only modest, departures from this core are justifiable.

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Endnotes

¹ For a complementary discussion, see Orgad (2015: ch. 1), who seeks to counter the impression that the majority culture can always "take care of itself" by outlining nine recent developments, including "shifts in migration patterns, changes occurring in Western society, and transformations in the world" (21).

² I am grateful to Avia Pasternak for discussion about this point.

³ Thank you to Jon Elster for pressing me on this question.