FOUNDATIONS OF A THEORY OF MULTICULTURAL JUSTICE

Rainer Forst

In his new book *Multicultural Citizenship*, Will Kymlicka extends and reinterprets his case – first made in *Liberalism, Community, and Culture* – for the recognition of specific rights of cultural minorities on the basis of liberal principles. He convincingly argues that we need to find arguments for cultural rights within the framework of a “comprehensive theory of justice in a multicultural state” (6) and he provides the foundations as well as a discussion of the political practice and application of such a theory. More specifically, in the course of his argument he suggests a number of important distinctions between different cultural groups (national vs. ethnic) and the grounds for their different claims to recognition, the corresponding rights they can claim (self-government, “polyethnic,” special representation), and the limits of these claims (external protection vs. internal restriction). These distinctions and the use Kymlicka makes of them are very illuminating and take the complex debate concerning the meaning of multicultural citizenship a decisive step further.

In my remarks on Kymlicka’s impressive enterprise, I want to focus on the question of whether the normative basis from which he proceeds is adequate for his attempt to provide a conception of justice for a multicultural society. It seems to me that the notion of personal autonomy which is the cornerstone of his distinctively liberal approach creates problems and internal tensions in his argument. Starting from this question, one can, I think, also shed some light on more specific points in Kymlicka’s theory, such as his conception of toleration and his view of political integration.

Let me begin by briefly indicating what I take to be the main normative characteristics of a conception of justice appropriate for a multicultural society. Obviously, such a conception should provide grounds from which to judge which claims to recognition, raised as claims to certain rights and resources, are justifiable among citizens of a multicultural state. Accordingly, the grounds on which this is to be decided have to be “not reasonable to reject”1 by the different cultural (ethnic or national) groups involved. The basic values and norms of such a multicultural “basic structure” – and the reasons for important political decisions – have to be equally acceptable to all citizens; thus no cultural group may simply generalize its own values and self-understandings and impose them on others. This does not mean that either the basic structure or the political language in general can be culturally “neutral” as a kind of moral Esperanto; rather, it means
that the unavoidable cultural character of the basic structure (its official language and symbols, for example) reflects the cultural diversity of the state and that its decision-making processes are structured in such a way as not to exclude some individuals or groups and their legitimate interests.

What is needed, therefore, is a common normative framework in which their respective claims can be raised, i.e., some basic principles of justice which allow for a concretization and interpretation that justly respects the claims of, for example, a long-standing national minority (such as an indigenous culture forcefully integrated into a state) as well as the demands and interests of other groups (such as those who originally were forced to enter the state as slaves, or – a different case – as refugees) or of immigrants who chose to become part of a country. According to Kymlicka’s suggestion, the basis of such a framework is a “liberal” notion of personal autonomy, a certain conception of a “societal culture,” a notion of equality between cultural groups and an awareness of historical agreements. This makes for a liberal theory of multicultural justice – though one which, as I see it, is not only a theory that applies to societies which are already liberal but also to those which are multinational or polyethnic and which should, in order to be just, be liberal in the sense argued for by Kymlicka.

Fundamental to his argument is the connection between autonomy and a societal culture as a “context of choice.” According to Kymlicka, a “multicultural” society may be of two kinds (or a mixture of both): either it is “multinational” and thus consists of two or more “societal cultures” or it is “polyethic” and consists of one “societal culture” that integrates a number of different ethnic, cultural groups that do not – and do not want to – form a societal culture of their own. A societal culture is defined as “a culture which provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres. These cultures tend to be territorially concentrated, and based on a shared language” (76). A societal culture Kymlicka thinks of as a “national culture” (80), the culture of a “people” (18). This term he then connects with the notion of personal autonomy by arguing that the precondition for the good life is that a person can autonomously choose (or revise) his or her conception of the good among a range of ethical options provided by one’s societal culture. A person’s life can be good only if it is “lived from the inside” and if he or she has the freedom and the chance to find, choose, affirm and question his or her life values in the context of his or her societal culture. Belonging to such a culture thus is necessary to lead an autonomous and good life: “Cultures are valuable, not in and of themselves, but because it is only through having access to a societal culture that people have access to a range of meaningful options” (83).

Apart from historical agreements between different national groups that can serve as the basis of regulating their co-existence, then, Kymlicka argues that political equality requires that a national minority be granted the kinds of self-government rights necessary to secure a cultural context of choice for its members.
and to avoid its being endangered by an economic and political structure favoring the dominant national group. This, however, only justifies certain “external protections,” not “internal restrictions” of the basic civil liberties of the members of such a minority culture: “In short, a liberal view requires freedom within the minority group, and equality between the minority and majority groups” (152). As far as ethnic groups – according to Kymlicka’s definition, immigrants – are concerned, equality calls for a more receptive and open national societal culture, but not for forms of political autonomy similar to the case of national minorities. They want recognition of being different though equal citizens of a state, not recognition as “dual citizens” of both a national minority and the larger state.

Although I agree with many of Kymlicka’s more specific arguments about the different forms of recognition of cultural groups in a multicultural state – and especially with his clarifications of the notion of “group-differentiated rights” and their purpose of protecting individuals and not groups or cultures per se – I doubt that the notion of personal autonomy upon which he builds his arguments is a sufficient basis for a conception of multicultural justice. Attractive as it may be for many, the liberal notion of autonomy as “freedom of choice in terms of how [persons] lead their lives” (80) is neither a generally sharable notion of autonomy – and thus is insufficient as an impartial ground of justice – nor does it do all the work Kymlicka thinks it does to explain the value of cultural membership as well as to justify the illegitimacy of “internal restrictions.”

The background of my critique is the following suggestion. As opposed to Kymlicka’s conception of autonomy, I think that a different notion of moral autonomy should be the basis of arguments for multicultural justice, one that is less ethnically thick but for that reason “not reasonable to reject” in a moral sense. This conception of autonomy does not include a particular notion of freedom of choice – along with a corresponding notion of culture as a “context of choice” – as a necessary precondition of the good life. Rather, it regards moral persons as having a basic “right to justification” in the sense that for every claim others make on them, and especially for every form of force to which they are subjected, they must be given adequate reasons justifying these claims and the norms on which the force rests. Persons are regarded – and respected – as autonomous in the sense that they are morally independent addressees and authors of intersubjective claims. I would argue that this form of moral respect and autonomy is the minimal basis of any acceptable conception of justice, and thus also of multicultural justice. Rather than a specific ethical conception of what an autonomous and good life is, it gives a more basic, mutually non-rejectable moral conception of the autonomous person that is not committed to a particular view of the good life. The main difference between the two conceptions is the following: A person may not accept the choice-conception of ethical autonomy as a precondition for the good life, but no (moral) person can justifiably – or reasonably, i.e., with good reasons – deny others their right to basic moral respect, whatever their notion of the good life may be. While Kymlicka is right that his formal conception of
autonomy as the capacity for a rational choice of one’s way of life and to maintain the possibility of its assessment and revision is not “comprehensive” in defining a “set of final ends and intrinsic goods to be pursued by each individual” (233, n. 12) and, further, that it is “widely shared in Western democratic societies” (164), it is still ethically “thicker” and more comprehensive than the conception of moral autonomy I am suggesting. For this reason, it is (a) too controversial to be the basis of a conception of multicultural justice, and (b) not even sufficient to serve the purposes Kymlicka thinks it can.

The insufficiency of his choice-conception of autonomy becomes obvious, for example, in his discussion of the value of cultural membership. Starting from the idea that “freedom involves making choices among various options” (83), Kymlicka argues that a societal culture provides these options and reveals their meaning within a cultural horizon. Yet the way this argument proceeds fails to make it evident why one needs one’s own culture as such a choice-horizon – and, indeed, Kymlicka then takes this up as a separate question (84). He answers simply that it is a matter of fact that most people want to remain part of the culture they were born into, and that there are no sufficient grounds for thinking otherwise. It then seems that this is one choice they have already made, i.e., a second-order choice to choose their way of life from the options their own culture provides. But this, surely, is an impossible assumption to make, for persons do not choose the culture into which they are born and in which they are raised. Moreover, this does not capture the value a culture has for its members. Thus, Kymlicka has to explain the value of cultural membership by discussing the constitutive role of culture for the identity of a person. Leaving aside the problem that – following Margalit and Raz (89) – he draws too close a connection here between “cultural” and “national identity,” he rightly points out that it is respect for the cultural identity of a person that calls for respect for the culture to which he or she belongs. Thus, it is not culture as a “context of choice” that is most important, but culture as a “context of identity” – the historically grown, particular “meaning” a culture bestows on the ethical options open to a person as a member of that culture rather than the number of options and choices it provides. If the main argument for the importance of a cultural context were the choice-conception of autonomy, it implies the implausible conclusion that a culture is more valuable because it provides a higher number of ethical options. To avoid this, one needs to say that ethical identity rather than the choice-conception of ethical autonomy plays the main role in arguing for the importance of a cultural context.

The distinction between an argument for cultural membership based on either a notion of “freedom of choice” or of personal identity combined with makes a difference in qualifying the kind of cultural context persons need. Sometimes it seems as if Kymlicka argues for respecting a culture – for example, an indigenous culture in Canada or the United States – only if this culture provides a wide range of ethical options and only if it is “governed by liberal principles” (153). It is not
clear exactly what this means: how many and which options must a culture provide, and what does it mean to require that it be governed by liberal principles? Is it enough to say that it is legitimate for a culture to preserve its traditional way of life so long as it does not force its members to remain within a rigid social structure lacking any possibilities of dissent or right to exit, or is it necessary that its internal social structure provide a wide range of options and be to some extent governed by liberal social principles like freedom of occupation and religious practice? Here it makes a difference which normative framework we adopt: if we start from the conception of ethical identity as constituted by a culture and the conception of moral autonomy and the “right to justification,” then the indigenous culture may not force an ethical identity on its members and thereby disrespect their moral autonomy, their right to dissent, and their right to exit. But if we start from the notion of ethical freedom of choice and rational revisability in a thick sense, then the culture must provide its members with a host of different social options and roles among which they can choose, and furthermore – and here lies the main problem – it must provide them with an understanding of themselves as ethically autonomous in the sense of having the freedom to decide between these various options. In both cases, “internal restrictions” that impose a certain ethical identity on the members of such a community – say, denying education to girls – are illegitimate. In the former framework, they are illegitimate because this (a) disrespects the moral autonomy of a person and (b) precludes the right of multicultural citizens to exit into the larger society. In the latter framework, however, the argument is that any such practice denies the “liberal” freedom and self-understanding that is most fully realized in a liberal society. The latter case tends to eclipse the reason respect for cultural membership was defended in the first place, namely as following from respect for the ethical and cultural identity of persons. In other words: internal restrictions should be ruled out for moral reasons that no culture can reasonably reject, not for reasons stemming from the particular self-understanding of a liberal society. To sum up: Persons belong to their cultural community – this is the identity argument Kymlicka needs to stress but does not adequately capture in his notion of autonomous choice; but they are not owned by it – this is the moral autonomy argument that suffices to rule out internal restrictions as illegitimate on moral, not specifically “liberal,” grounds.

My argument that internal restrictions are illegitimate on moral as well as political grounds – violating both the dignity and autonomy of moral persons and their rights as citizens – implies, with respect to the latter, that members of a national minority are members of this minority as well as being citizens with a full set of civil liberties. Thus I find it problematic to say, as Kymlicka does, that a multinational state consists not of one but of two (or more) “political communities” (167, 182). If these two political communities were on the same level, there would be no way to defend a common set of citizenship rights that a – politically partly autonomous – national minority may not violate. The question Kymlicka raises as to whether these rights should be enforced by one Supreme Court or in
some other way is then a separate issue. It is important to note that this argument that members of national minorities have certain individual rights is not based on a liberal conception of autonomy, but on reflection about what the rights and duties of citizenship are. Hence there are moral as well as political grounds for ruling out internal restrictions: members of national minorities are always also moral persons (i.e., members of the community of all human beings with the most basic “right to justification”) and citizens (i.e., members of the larger political community with certain civil liberties).

It is, then, not the distinction between liberal theories which emphasize autonomy and those which emphasize tolerance that is most important to a normative understanding of the relationship between different cultural groups (as Kymlicka claims on 154); rather, it is a question of which notion of autonomy lies at the center of a theory of multicultural justice. As I already indicated, this plays a role in Kymlicka’s conception of toleration and its limits (cf. chap. 8). Here the difference between a “comprehensive” (to use Rawls’s term), ethical-liberal and a moral understanding of autonomy is obvious. Relying on the former, Kymlicka argues that only “liberal” cultural groups can be fully accepted by the larger liberal society, that is, those communities that share the liberal understanding of the good life as presupposing an ethical autonomy of choosing between meaningful options. Thus, only communities which are tolerant in this sense can be fully tolerated and respected as political equals – only those communities that accept and value the notion of the person as capable of a rational choice, assessment, and revision of his or her ethical values and commitments. According to this notion of “full” or “strong” tolerance, as I would call it, autonomy in Kymlicka’s sense and tolerance are “two sides of the same coin” (158); one presupposes the other. There are several problems with this view, I think.

To start with, it overlooks the possibility that the ethical identity of a reflective person may indeed not include understanding oneself as being autonomous in this way. Persons may, for example, think that there are certain ethical truths that are, though not beyond rational assessment, not revisable because they are simply true. They cannot think of themselves without believing in and living according to these truths. Kymlicka thinks that such persons are doomed to be intolerant, for they deny the value of autonomy – not just for themselves, but also for others. They will not be able to accept a basic structure justified on the assumption that persons have (as Rawls says) a “highest-order interest” in being ethically autonomous and able to revise their final ends. As Kymlicka says: “The problem is to explain why anyone would accept the ideal of autonomy in political contexts unless they also accepted it more generally” (160). How can people be “communitarians” in private life and “liberals” in public life?

It seems to me there are several reasons to think this possible. First, it is not inconceivable that a person who thinks that some of her deepest commitments are unchangeable could accept that others see things differently, that is, have a different understanding of ethical life. She may think that they therefore lead a worse
life, or she may simply think that they lead a different life, one she would not want to lead given her identity. She may furthermore think that it is her duty to teach her children the right values and way of life, but she could still accept that (a) they have to see the value of this way of life for themselves and not follow it blindly, and thus she would accept (b) that it is neither ethically desirable to force them into a certain way of life nor (c) morally permitted, for she does not own her children. So much more so, then, for what she thinks she can force other people to do or believe. This does not mean that she accepts Kymlicka’s idea of rational choice and revisability, for she considers certain values non-revisable, but neither does she deny persons’ basic right to be able to lead their way of life. She respects others’ moral autonomy, but she denies that a precondition of the good life lies in the capacity and possibility of an autonomous choice between different ethical options. Rather, she thinks that a precondition for the good life is leading the right way of life “from within” and seeing its truth. Second, then, she would – in a pluralistic society – expect others, who have different beliefs, to respect her beliefs as the basis of a valuable life led “from the inside,” not one that is the result of blindness or dogmatism. She wants it to be respected as “critically affirmed,” though not as basically revisable. There is a difference between affirmation and revisability: even though one cannot think of oneself as choosing a different way of life, one is not uncritical towards one’s way of life and wants it to be seen as intelligible and valuable. In this sense, one wants to be respected as being “autonomous” in leading this way of life, autonomous in the sense that no one has a right to deny that it is deeply affirmed and not a result of coercion. Hence, third, such a person both respects other ways of life (though she does not think them ethically desirable) and expects persons with other ways of life to respect hers mainly for moral reasons: neither has good reasons to force their views of the good life on those who live differently, which does not mean that a condition for this kind of respect is to regard ethical values as basically revisable and changeable.

Overlooking this relation between moral respect and ethical convictions forces Kymlicka in his discussion of tolerance to journey from the “millet system” to a liberal society and back, as it seems. Tolerance in a “millet system” meant the dominant cultural group, the Muslims of the Ottoman Empire, “tolerated” the different religious groups within its empire as long as they did not question its authority. Neither within the Muslim territory nor within other, Jewish or Christian ones under Ottoman rule, did there exist anything like religious liberty and freedom of conscience, yet the system itself was one of mutual toleration in the sense of religious-political co-existence. Opposed to this, Kymlicka argues that liberal – “strong” – tolerance protects these individual liberties and personal autonomy. And this, in turn, as we have seen, calls for tolerance towards individual dissent and difference. This answers the normative question of toleration. Yet with regard to the pragmatic question concerning what liberals who face illiberal minorities should do, things look different according to Kymlicka (cf. 164). Here
he argues that liberals cannot simply impose their principles on groups that do not share them. Here, surprisingly, we find ourselves back in a “millet system,” though now the majority is a liberal one. This majority, according to Kymlicka, should regard other, illiberal national minorities in the manner in which it regards a different country, and thus be reluctant and “sceptical of imposing liberalism on national minorities within a country” (167). All the liberal majority can do is work towards an internal reform of illiberal minorities; but in general, the best one can hope for is a certain “modus vivendi,” i.e., a weak form of mutual toleration lacking the normative basis of a respect for individual autonomy. The reason why we are back to this modified “millet system” is that Kymlicka’s basic notion of autonomy is – as I pointed out before – “liberal” in the sense of being part of a comprehensive liberal social and cultural order. Thus there is no middle ground between an autonomy-respecting liberal culture and an illiberal one – or, accordingly, between strong or full tolerance based on liberal, comprehensive values towards the former culture and weak toleration based on pragmatic grounds towards the latter. Yet if one starts from a form of moral autonomy that needs to be respected by any culture, implying the basic “right to justification,” then to deny this form of autonomy in a normative context is by definition unjustifiable – not just by “our” liberal standards but also by the moral standards that the victims of this immorality raise against their oppressors. Thus requiring recognition of this form of autonomy is not an imposition of a liberal way of life, but an insistence on a basic form of respect no culture can deny to its members so long as it claims to be normatively accepted by those who belong to it. Cultures that show such a form of respect can and should be tolerated for moral reasons. Thus a conception of moral tolerance becomes possible that is less demanding than the notion of strong liberal tolerance but which is still, as opposed to weak, pragmatic tolerance, based on moral principles, thus ruling out “internal restrictions.”

Furthermore, given that, as I said, members of a national minority are – contrary to Kymlicka’s argument here – not members of a different state but still citizens of a comprehensive political community with a justifiable basic structure, they have basic rights not just as human beings but also as citizens. Here again, my conclusion is similar to Kymlicka’s, but my argument is different.

I think, then, that with respect to Kymlicka’s discussion of “the ties that bind” the members of a multinational state, one needs to stress that such a state only exists if there is one encompassing, just and democratic political community that takes the claims of the different national and ethnic groups into account. Whether we regard this then as a “super-societal culture” or choose some other term, it seems that the basis of the “shared identity” Kymlicka puts forth cannot but be what one could call a shared understanding of a historically situated political project of establishing a just society among different groups. What this identity adds to the notion of justice is its historical “situatedness,” including a complex past and a host of common economic, social and political institutions. Justice means more than “shared values” in the abstract sense, as Kymlicka rightly
argues: it means that citizens of a multicultural state understand that they are partners in the common project of establishing a just society — a society which grants each member the kind of rights and resources that can be morally justified, and not simply by reference to “liberal” values. Only a more general, though still historically situated, understanding of justice can provide such a basis of justification.

If a state fails to treat its citizens justly and equally, taking their different historical and cultural “situatedness” into account, or if, in the most difficult case, a group no longer accepts the demands of justice and reciprocity as generally understood within the larger political community, then such a state will no longer be a viable project. Concerning the possibility of secession, especially in the latter case, I think it is necessary to stress more than Kymlicka does (186) the danger of creating new injustices in such a process. For we hardly find national minorities with a “societal culture” that is not in multiple ways institutionally connected to the larger community and is not internally too culturally diverse and “polyethnic” to think of secession as a harmless procedure. If there is an intercultural understanding of justice that legitimates the basic structure of a multicultural state, it also applies to the conflicts and procedures of its dissolution. Here, again, we are in need of a moral notion of multicultural justice.

NOTES

2. These two groups pose difficulties for Kymlicka’s categories, as he himself (24ff., 95ff.) points out.
3. For a more elaborate discussion, see R. Forst, Kontexte der Gerechtigkeit. Politische Philosophie jenseits von Liberalismus und Kommunitarismus (Frankfurt/M.: Suhrkamp, 1994), esp. chs. II and IV.