

# Culture: Choice or Circumstance?

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In this paper, I would like to discuss two recent attempts to incorporate group-differentiated rights and entitlements into a broadly liberal conception of distributive justice. The first is John Roemer's "pragmatic theory of responsibility," and the second is Will Kymlicka's defense of minority rights in "multinational" states.<sup>1</sup> Both arguments try to show that egalitarianism, far from requiring a "color-blind" system of institutions and laws that is insensitive to ethnic, linguistic or subcultural differences, may in fact mandate special types of rights, entitlements, or compensatory arrangements for members of minority groups. These proposals are attractive because they attempt to ground these special rights without reference to controversial philosophical doctrines, but merely through appeal to the widely accepted political norm of equality. Furthermore, if either of these arguments were to succeed, it would allow liberals to avoid many of the difficulties that have often led proponents of "the politics of difference" or the "politics of recognition" to adopt an oppositional stance toward more traditional forms of liberalism.<sup>2</sup>

Both Roemer and Kymlicka take as their point of departure Ronald Dworkin's resource egalitarianism (which does not recognize group-differentiated entitlements).<sup>3</sup> They both attempt to extend Dworkin's mechanism for compensating those disadvantaged through circumstances beyond their control, in such a way as to license special transfers and entitlements for minority cultures. They disagree, however, on how this should be done. Roemer argues that the *preference pattern* induced through membership in a minority culture may prove disadvantageous, and so form the basis of a legitimate claim for compensation. Kymlicka takes a slightly narrower view. He claims that agents should be held responsible for their own preference pattern, but they cannot be held responsible for how many others share the same pattern. In cases where having a certain culturally induced preference pattern results in disadvantage *by virtue of the fact that it is not widely shared*, agents have a legitimate claim to compensation.

Both of these proposals have problems – cases where they appear to conflict with our intuitions about justice and desert. I would like to show, using some examples of this type, that when these systems of group-differentiated entitlements appear plausible, it is because we have some respect for the value system underlying the problematic preference pattern. This suggests that the attempt to avoid directly evaluating the preferences that leave members of minority cultures systematically disadvantaged in the larger society is unlikely to succeed. I will

argue that judgments of responsibility and entitlement cannot be made without considering the substantive merit of the claims that are raised. However, this sort of evaluation cannot occur until relations of mutual recognition and respect have been established between all parties. It is a consequence of this argument that the politics of recognition must be assigned a more significant place in the theory of justice than many liberals have been inclined to suppose. By way of conclusion, I will attempt to use this diagnosis of the problem with Roemer and Kymlicka's accounts in order to show precisely where the politics of recognition must "fit" into the theory of distributive justice. This analysis will, I hope, provide a rudimentary blueprint for the construction of a unified theory of social justice.<sup>4</sup>

### I. Resource Egalitarianism

It should be noted at the start that minority rights are not a problem for versions of egalitarianism that attempt to equalize welfare outcomes. According to these sorts of views, people are entitled to whatever resources and opportunities it takes to get them up to the target welfare level, and if some individuals or groups need more than others, so be it. The problem for minority rights arises when welfarism is rejected, and there are a variety of good reasons for doing so. Dworkin's argument against welfare egalitarianism, which has become the most influential, faults such proposals for failing to hold individuals responsible for their own actions.<sup>5</sup> If two people in similar circumstances are given the same amount of money, and one chooses to invest it in secure, low-return savings, while the other puts it into a high-risk, high-yield investment, our intuitions suggest that neither is entitled to compensation from the other once the long-term results of these investments is known. If the high-risk venture fails, then that is bad luck for the high-risk investor. She should not be able to claim part of the low-risk investor's money in the name of equality. Similarly, if the high-risk investment pays off, the low-risk investor should not be able to demand a share.

The conclusion Dworkin draws is that inequality is acceptable, from the moral point of view, only when it arises from losses or gains that are the result of the agent's own choices. Inequality is *unacceptable* when it arises from gains or losses that are the result of circumstances beyond the agent's control. Dworkin argues, therefore, that resources should be distributed in such a way as to equalize initial life-circumstances. Agents will then use these resources to pursue their life projects, making choices that, in effect, convert their resources into welfare. How well they make these choices, i.e., how much welfare they are able to get out of their resources, is their own responsibility.

Dworkin proposes as a test of equality that the initial allocation of resources be "envy-free," i.e., such that no one prefers the bundle that anyone else has to her own. In order to show how such an allocation could be achieved, he presents the following thought experiment. A ship is about to run aground on a deserted island, with no hope of rescue. The passengers decide to divide up goods on the island

by having a big auction. They itemize all of the resources, then give everyone an equal number of clam shells to use as currency. The resources are then auctioned off. Once a set of prices is reached at which all markets clear, the allocation that results will be both efficient and envy-free.<sup>6</sup> (Since everyone started out with the same number of clam shells, no agent would envy the bundle of goods purchased by another, since this is inconsistent with her decision not to purchase it.)

One of the advantages of this scheme, in Dworkin's view, is that it forces individuals, when choosing their projects, to take into account the costs that carrying out these projects will impose upon others (i.e., it forces agents to fully internalize the costs of their activities). If my life-project requires exclusive access to a vast expanse of beach-front property, carrying out such a project has the effect of denying others access to an intrinsically scarce resource. Through the auction, the fact that others may have use for this resource will be reflected in its price. Scarce resources will cost more, precisely because appropriating a scarce resource imposes a greater cost upon others than appropriating a plentiful resource. This means that individuals, when formulating their life plans under a regime of equality of this type, will be forced to moderate their goals in order to accommodate the interests of others. Thanks to the auction mechanism, the extent to which satisfaction of a particular preference will require denying satisfaction to others will be reflected in the cost of the resources required to satisfy that preference.

Dworkin considers it an advantage of his brand of egalitarianism that it discourages individuals from cultivating such "expensive" preferences. Welfarism, on the other hand, would have the perverse consequence of compensating those who have such preferences. Dworkin gives an example of an individual who cultivates a taste for fine wine, so that he can only derive satisfaction from the rarest vintages. This person has, in effect, made himself inefficient at converting resources into welfare. Welfarism would transfer resources away from beer-drinkers, and those with similarly frugal tastes, toward the wine connoisseur, so that each would enjoy the same level of satisfaction. Resource egalitarianism would allocate the same amount of money to each, to be spent on their beverage of choice. This has the effect of rewarding frugality, as the individual with less expensive tastes is able to convert this bundle of resources into a higher level of satisfaction. (Note that frugality is not rewarded because it is intrinsically good, it is rewarded because the frugal individual imposes fewer costs on others, and therefore needs to moderate her desires to a lesser degree.)

The problem with this model, however, is that some people are inefficient at converting resources into welfare because they have voluntarily cultivated expensive tastes, but some people are inefficient because of circumstances outside their control. The individual who indulges a taste for rare wine, opera, fine art, etc., is clearly making costly choices. However, individuals who are born handicapped also require a greater share of resources in order to achieve a level of well-being comparable to that enjoyed by able-bodied individuals. They are also "inefficient" at converting resources into welfare, but clearly through no fault of their own.

Considerations such as these led Dworkin to the conclusion that individuals should be compensated for expensive preferences when these are the result of their circumstances (“handicaps”), but not when they are the product of choice (“tastes”). The tricky part is to determine which are which. Dworkin suggests that if the agent “identifies” with her preferences, then they should be treated as choices.<sup>7</sup> The gourmet “identifies” with his special dietary preferences, and would not seek to change them. The person with severe food allergies, on the other hand, does not “identify” with her potentially expensive preferences. This distinction can be drawn, and the level of compensation determined, by offering an *ex ante* side market in insurance against expensive preferences. The idea is that people will only pay to insure themselves against events that are genuinely outside their control.<sup>8</sup> The money collected in premiums is then transferred to those who wind up having the handicap in question.

While this account has some surface plausibility, critics have pointed out that it is inhospitable to many of the claims made by members of minority cultures. In Dworkin’s view, everyone gets an equal bundle of resources, which they then spend as they like. This accommodates differences among individuals, because it allows them to select their own bundle of resources, and then use these resources to pursue projects of their own choosing. However, critics have pointed out that members of cultural minorities may be systematically disadvantaged when it comes to converting these resources into welfare. So even though minority groups would be “formally” treated equally, this would be compatible with a significant degree of substantive inequality.

An example of this, suggested by Kymlicka, involves patterns of land use among Aboriginal groups in Canada. Native communities would like to see large tracts of wilderness set aside as traditional hunting grounds. Hunting and trapping are forms of economic activity that offer Native communities integration into the larger economic system with only minimal disruption of their traditional culture. However, hunting is also an extremely non-intensive form of land use, when compared to forms of use favored by the majority society – logging and mining. In this case, the traditional hunting lifestyle appears to be an extremely expensive preference. Should Native communities have to bear the entire cost of this preference? According to Dworkin’s test, they should, because they identify with it. Many Natives want to earn a living from hunting and trapping, and they want their children to grow up the same way. In fact, it is important to the role of culture in shaping personal identity that the individual in question identify with the form of life valued by that tradition.<sup>9</sup> It therefore appears that, under Dworkin’s scheme, individuals are to be held responsible for preference patterns that form part of their cultural heritage.

There is something about this conclusion that has struck many people as unreasonable. Hunting and trapping is not just something that Natives like to do. The activity plays an important role in sustaining other important aspects of their culture. These include, most importantly, the settlement patterns of Native

communities, and the relationship to nature that underlies many forms of traditional spirituality. This gives the preference in question a significant non-voluntary dimension, since relinquishing this form of activity would threaten a number of important aspects of Native culture. In contrast, there is much less at stake for members of the dominant culture in the decision whether to log or mine a particular tract of wilderness.

Both Roemer and Kymlicka share these intuitions. However, they offer different diagnoses of the source of the unreasonableness.

## II. Roemer

Roemer claims that Dworkin simply picked the wrong way to make the “cut” between choice and circumstance. According to Roemer, Dworkin’s mistake was to try to determine which aspects of an agent’s conduct were voluntary by appealing to what the agent *experiences* as voluntary. Roemer claims that the circumstances that are beyond an agent’s control are, in effect, an objective fact about the agent, and should therefore be determined using statistical social-scientific methods.

Roemer therefore proposes an arrangement in which, for purposes of determining entitlements, the population of a society is partitioned into a set of sociological types, where membership is determined by a set of factors that are thought to influence choice behavior. Although he considers the determination of these factors to be a “pragmatic” question to be decided by members of the society in question, he provides a sample list that includes gender, ethnicity, occupation and age.<sup>10</sup> The level of responsibility exercised by agents in their choices can then be determined by comparing them against the median behavior among members of the *type* to which they belong. Whether an agent’s actions or preferences are reasonable will thus be determined by comparing them against the actions and preferences of those who are similarly situated, from a sociological point of view. The goal of the egalitarian planner will be to allocate resources to individuals in such a way as to equalize the opportunity for welfare enjoyed by those who exercise the median level of responsibility for their type. In this way, individuals who belong to a type that is less efficient at converting resources into welfare will receive more resources than those who belong to a type that is more efficient. However, the extra resources that they receive will only be enough to equalize the welfare they obtain if they use them responsibly, compared to the way that other members of the type use them.

This cashes out in terms of choice and circumstance as follows. The sociological type you belong to is a circumstance. If members of your type tend to have expensive preferences, you will receive a level of compensation sufficient to bring the median member of your type up to the level of expected welfare available to median members of other types. However, what you do with these resources is your own choice, and you will not be compensated if the level of

satisfaction you are able to attain with them is less than the level attained by the median member of your type.

Consider how this would work in the case of Native land-use patterns. Suppose that society is partitioned into two types, Native and non-Native. If all the land were divided up evenly between individuals, the level of welfare obtainable by non-Natives would be, on average, much higher than that obtainable by Natives, because of their preference for intensive forms of resource exploitation. Naturally, there will be variation in the level of welfare obtainable by individuals within each group. Some Natives may be uninspired trappers, and some non-Natives may have scruples about logging. In order to equalize, the land will be allocated in a way that equalizes the welfare obtainable by the median Native and non-Native. Under this arrangement, the lazy trapper will still be poorer than the median trapper, but it will no longer be because he is a trapper that he is poor, only because he is a lazy trapper. Thus the contribution that culture makes to inequality is factored out, leaving only differences in individual achievement. (In fact, it is possible to factor out anything that might be thought to influence behavior simply by selecting that characteristic as a basis for refining the partition.)<sup>11</sup>

The problem with this proposal is that it can easily be seen to generate a variety of perverse outcomes, from both a moral and a strategic point of view. The morally perverse outcome is that many preferences that we would consider gratuitously expensive are related to class and status group position. This means individuals who have expensive tastes by virtue of having been born into the upper classes will have just as much claim to compensation as members of minority cultures, the handicapped, etc. In some cases, it will be possible to select the types in such a way as to ignore class background, and so avoid compensating members of such groups. But in some cases it will be unavoidable. For instance, anyone attempting to develop an egalitarian social policy for South Africa will have to use old white/black/colored classification system in order to identify the *victims* of apartheid. However, many whites in South Africa developed extremely expensive preferences under apartheid, by virtue of the privileged social position they enjoyed. It appears to be a consequence of Roemer's view that they should be compensated for this fact by receiving a larger share of the resources in a post-apartheid society.<sup>12</sup>

From a strategic point of view, Roemer's proposal also appears to generate a number of perverse incentives. Even if a particular type of preference can be traced back to an agent's cultural context, and even if the associated pattern of behavior is very deeply entrenched in the individual, this does not mean that the cultural pattern cannot be changed. In fact, legions of ethnographers have been impressed precisely by how adaptive cultures can be. The reason that functionalist accounts of culture are such a constant temptation for anthropologists is that many of these adaptations clearly represent improvements on previously suboptimal interaction patterns. Even though individuals may find it hard to modify the values and attitudes they were raised with, they will not automatically pass them

on to their children. One of the primary reasons for not doing so is precisely the recognition that they have become maladaptive.

Both of these objections reveal, it seems to me, the same problem with Roemer's proposal – it compensates agents for behavior that may be typical of persons in their situation, but that is not genuinely outside of their control. There are cases in which we consider it legitimate to demand cultural adaptation, either for moral or pragmatic reasons, and we know that agents are capable of making such changes. Roemer's proposal would have the effect of changing the social environment in such a way as to immunize members of minority cultures against the costly effects of their own values and attitudes. It thereby creates the same problem for cultures that welfarism created for individuals. In this case, rather than allowing individuals to disregard the costs that their choices impose upon others, it allows types to disregard the costs that their behavior patterns impose upon others. In both cases, it relieves individuals of the incentive to avoid costly actions. It therefore generates a type of moral hazard.<sup>13</sup>

### III. Kymlicka

Perhaps the most influential argument for group-differentiated rights to emerge in recent years is that of Will Kymlicka. Kymlicka grants that the preferences that individuals have is in large measure the product of the culture they grew up in.<sup>14</sup> He rejects, however, the idea that individuals should be compensated in circumstances where this set happens to include expensive preferences. His view is that individuals retain control over their preferences, and must be held responsible for them.<sup>15</sup> What they do not have control over is the number of other individuals in the society who share the same preference pattern. In cases where an individual has preferences that can be traced back to membership in a particular cultural group, and these preferences are disadvantageous *by virtue of the fact that this cultural group is a minority within the larger society*, then the individual has a right to compensation for the costs that the rareness of these preferences imposes.

Kymlicka's idea is that while some preferences are "intrinsically" expensive, others are only "accidentally" so. A taste for gourmet cooking is intrinsically expensive, because its preparation is labor-intensive. A preference for speaking French, on the other hand, is no more expensive than a preference for speaking English or Spanish, when taken in isolation. However, in the case of North American society, where native French-speakers are vastly outnumbered by Anglophones and Hispanics, the preference becomes a very expensive one. It is the latter type of situation that is relevant to the question of group-differentiated rights, in Kymlicka's view. It is not membership in a cultural group that gives individuals a claim to special entitlements or compensation, but membership in a *minority* cultural group. This is because the characteristics of the culture to which an individual belongs are not a circumstance outside her control, whereas the number of other individuals who share this culture is.

Kymlicka illustrates the mechanism through which membership in a minority culture can render one's preferences expensive with the following variation on Dworkin's shipwreck story. Instead of there being one ship that is about to run aground, there are two ships. Using the ship's computers, which are in communication, passengers arrange to auction off the island's resources. Kymlicka asks us to then imagine that, after the auction is run, the passengers discover that they belong to two different cultural groups, one of which significantly outnumbers the other. Kymlicka argues that because of the various advantages associated with being in the majority, e.g. territorial concentration, this will result in many members of the minority group envying the bundles owned by members of the cultural majority. However, if the auction is re-run with agents having knowledge of their cultural membership, the new allocation will result in *every* member of the society receiving a bundle that they prefer to the bundle they received under the first allocation. This is because members of the minority group will have to bid harder and pay more for some goods, e.g. contiguous territory, allowing members of the majority culture to pick up their former possessions at lower prices. The result is an unexpected windfall for the members of the majority culture, since they were not dissatisfied with their initial bundle, but go on to receive a bundle that is even better.

In order to understand what Kymlicka takes to be the moral of the story, it is important to note that the basic preferences that agents hold do not change between the first and second auction.<sup>16</sup> Thus the disadvantage that members of the minority cultural group experience is not due to the specific preferences that they have, but to the fact that they are not widely shared. Unfortunately, Kymlicka identifies the phenomenon, but does not specify in any precise terms how it is brought about. In order to render this more precise, it is necessary to establish in more abstract terms the characteristics of preference patterns that gives the extent of their diffusion distributive effects. One way of doing so is to observe that some types of preferences generate benefits that the market for resources does not internalize. This is particularly so in the case of preferences for participating in certain types of social activities. For instance, it takes four people to play a good game of poker, just as it takes four to play mah-jong. The fact that I have a preference for mah-jong therefore generates a slight positive externality for those who like to play mah-jong, because it makes it easier for them to find a gaming partner. This may never show up in the market for resources, because my fondness for one game or the other may not translate into a desire to own either a deck of cards or a mah-jong set. Similarly, a preference for speaking English generates an externality for those who also speak English by, for instance, reducing transaction costs on market exchanges. Thus we may derive benefits from the fact that others have preferences that are similar to our own. Insofar as culture plays a role in determining preferences, this means that we derive benefits from being in the company of members of our own culture.

In the case of Kymlicka's auction, before the agents realized that they were

members of different cultural groups, they assumed that they would enjoy a certain benefit from others. The discovery that they belonged to two different cultural groups changes this situation in an asymmetric way. Members of the majority culture still receive close to the same level of benefit. However, members of the minority culture have to go out of their way in order to secure it, and this means that they will have to pay more in order to secure what members of the majority get for free. But this cost in no way reflects “different choices about the good life”; it reflects the fact that the choices they make happen to be statistically infrequent.<sup>17</sup> This is easiest to see when cultural pluralism results in an asymmetric imposition of transaction costs.

If one accepts this view, then it is possible to retain Dworkin’s approach to making the “cut” between choice and circumstance. Individuals can be held responsible for whatever preferences they identify with. In cases where these preferences reflect shared cultural values, individuals will most often identify with them. And since it is highly unlikely that anyone would take out insurance against having the values that they have, individuals would not be entitled to any form of compensation for culturally-induced preferences that are intrinsically expensive. However, it is reasonable to suppose that agents would want to insure themselves against the various disadvantages that stem from being a member of a minority group, since this is clearly something that is outside their control. Insofar as being a member of a minority renders one’s preferences expensive, agents would be entitled to compensation for the extra cost associated with having rare preferences.

This is a somewhat subtle argument, and an example may help to clarify how it differs from Roemer’s. In order for land to be used for hunting and trapping, it is important that the migration patterns of animals not be disturbed. Since mining and logging disrupt animal life in a way that hunting and trapping do not, non-Native patterns of land use generate significant negative externalities for Natives. This gives members of Native communities a strong need for contiguous land ownership. However, the fact that they are a tiny minority means that they must bid harder and pay more in order to secure this territory. Thus they are to be compensated, not because their pattern of land use is non-intensive (as Roemer would have it), but for the costs that they incur by virtue of the fact that very few others practice this pattern of land use.<sup>18</sup>

This much seems reasonable. However, Kymlicka’s proposal faces difficulties that are in one way quite similar to Roemer’s: it does not target the specific inequalities that should be the object of concern. First of all, it should be noted that whenever there are efficiencies of scale in the production of a good, each individual who purchases that good generates a positive externality for all those with similar tastes. Thus people who like reading the sort of books that are produced in small print runs have to pay more for them, but it would be odd to think that they are entitled to compensation from those who read mass-market paperbacks. Similarly, a large number of “elite” preferences are expensive by

virtue of the fact that the upper classes who hold them are not numerous. The connoisseur, for instance, must pay more for her single-malt scotch in part because she wants it to be well aged. Scotch gets more expensive as it ages because there are lots of people who would be happy to drink it at any given time. This means that the connoisseur must, in effect, pay the producers not to sell it to such people. But if everyone shared the connoisseur's tastes, and could not palate improperly aged scotch, then the price would fall. Thus, insofar as the connoisseur must shoulder additional costs by virtue of the fact that she has a preference for older scotch than the median drinker, she may be eligible for compensation under Kymlicka's plan.

Furthermore, the examples Kymlicka uses to illustrate his case are invariably ones in which the prevalence of a preference generates a positive externality only for those who share it, or a negative externality only for those who do not. He does not consider cases in which the prevalence of a preference pattern generates a negative externality for those who share it, or a positive externality for those who do not. Most obviously, the mere fact of having a certain set of preferences generates a negative externality for everyone else with similar tastes in the form of increased competition for particular goods. North of the tree line, for instance, Natives can acquire land at virtually no cost, because non-Natives have almost no use for it. Here having a minority preference pattern is a tremendous benefit. Kymlicka does not show that when the costs are weighed against the benefits of having a minority preference pattern the transfers will flow in the direction that he believes to be morally appropriate.

#### **IV. Critique**

This discussion has shown that while both Roemer's and Kymlicka's proposals handle certain core cases well, they also mandate transfers in cases where we tend to think that a particular group is *not* entitled to compensation (as with the case of scotch connoisseurs and whites after apartheid). This leads me to believe that both proposals suffer from a failure to pin down precisely what it is about being a cultural minority that entitles one to demand accommodation from others, i.e., they do not fully articulate the morally salient features of cultural membership. The reason they are unable to do so, in my view, is that the action-theoretic models underlying both proposals are insufficiently differentiated. Both regard the basic issue as one of finding a reasonable balance between the interests of one or more groups of individuals. While this characterization of the problem is no doubt correct, both go on to what I regard as the illegitimate presupposition that these individuals pursue their interests in an instrumental or purposive-rational fashion. In my view, this obscures the most important feature of culturally determined practices, which is that they are not sustained by systems of instrumental action.

Both Roemer and Kymlicka recognize the fact that culture falls somewhere

between choice and circumstance. In the clear-cut cases, such as a person who is born blind, circumstances are given by nature. Culture, on the other hand, when acquired through primary socialization, takes the form of what is often called “second nature.” Patterns of behavior and preference acquired in this way are not hard-wired, but they cannot easily be revised because they play the role of “building blocks” in the development of more complex structures, such as personal identity. The term “value” is used to denote elements of the cultural system that have acquired a significant role of this type within an agent’s motivation system. The characteristic of behavior patterns motivated by such values that has impressed sociologists since Max Weber is that they have a peculiarly non-instrumental character.<sup>19</sup> Rather than being a series of teleological interventions in the natural world, value-oriented conduct involves the direct “acting out” of prescribed behavioral routines.<sup>20</sup>

The importance of this fact can be seen by considering a common rationale for compensating agents for their circumstances. In general, the purpose of making agents pay the cost of their own choices is to make them consider the impact that their actions will have on others. An egalitarian society that failed to do so would allow agents to disregard the interests of others with impunity. However, in cases where it is not an agent’s choices that inconvenience others, but rather her circumstances, it is often said that there is “no point” in charging her. Since these circumstances are outside of her control, increasing the costs associated with them is not going to make them any less likely to occur. Similarly, compensating the agent is not going to make the circumstances more likely to occur, and so there is no problem of moral hazard.

What makes the behavior dictated by choice different from that dictated by circumstance is that the former can be modified through deliberation. The purpose of “internalizing” expected costs is precisely to modify the deliberative context in order to make certain forms of behavior less likely to occur. However, all of this rests upon the assumption that the agent’s deliberations are sensitive to cost, viz. that she is utility-maximizing. Imposing costs upon utility-maximizing agents, on the grounds that their activities inconvenience others, will lead them simply to substitute some lower-cost pattern of activity.

The problem with culturally-induced patterns of conduct is that they are not in general utility-maximizing. People may be acting in a particular way, not because they regard it as in their interest to do so, but because they feel morally obliged. They may feel that abandoning certain practices would be a betrayal of the memory of their ancestors, a sign of disrespect for others, etc. (*Québécois* francophones, for instance, do not simply have a preference for speaking French; they feel an obligation to preserve a certain historic community.) Many culturally-prescribed forms of conduct will therefore be similar to behavior induced by circumstance, in that there may be “no point” in penalizing them. Since the action is not governed by a cost-sensitive mode of deliberation, imposing additional costs may not lead the affected individuals to substitute lower-cost alternatives.

As a result, an intervention that is intended to establish fair terms of interaction may simply generate Pareto-inefficiency.

Thus the similarity between culture and circumstance is that both produce patterns of behavior that are immune to modification through incentives. In the case of natural circumstances, this is because the agent has no control over his actions. In the case of culture, it is because his actions are governed by a mode of deliberation in which actions are prescribed directly, without reference to outcome. In the former case, the agent is subject to natural necessity. In the latter case, the agent's conduct is governed by *deontic* necessity. This accounts for the peculiarity of culturally-prescribed practices. While agents are clearly choosing their actions voluntarily, they are doing so in a way that may make them relatively insensitive to the costs that these actions impose on both themselves and others. While the teleological mode of deliberation associated with utility-maximization has the possibility for compromise built-in, the deontological does not. In my view, this is what accounts for the fact that we are willing to make special arrangements in order to accommodate different cultural practices. A person who inconveniences others in order to pursue her self-interest more effectively is not particularly sympathetic. However, someone who imposes costs upon others, but whose conduct is motivated by a sincere sense of moral obligation, has much better grounds for staking a claim. And certainly punishing this person would seem obtuse. This is what distinguishes the case of the scotch connoisseur from that of the Native trapper and the *Québécois* francophone.

However, I think that it is important to keep culture and circumstance distinct. In my view, neither Roemer nor Kymlicka finds the right formula for doing so. Roemer attempts to dissolve the difference between deontic and natural constraint by subsuming the two under the less precise notion of statistical correlation. Kymlicka retains the special status of culture by assigning it the role of a "context of choice," but gives it only an indirect role in the determination of conduct by supposing that it operates by instilling patterns of preference in agents. This makes cultural practices look a bit too much like choice (albeit second-order), and so Kymlicka has difficulty at points explaining why members of minority cultures shouldn't just learn to substitute alternative practices for their traditional ones (e.g., why French Canadians should not just receive subsidized English-language education).<sup>21</sup>

Once the difference between cultural practices and circumstances is correctly understood, it is possible to exclude a number of the problematic examples that arose with Kymlicka's and Roemer's proposals. Claims for compensation should not be entertained for patterns of preference that are merely conventional, in the game-theoretic sense, among a certain group. The type of behavior that can form the basis for a claim to entitlement will be one where there are specific behavioral norms that bind individuals to prescribed patterns of conduct. (Naturally, picking these out will be complicated, as there are ample opportunities for strategic uses of culture.<sup>22</sup>)

However, this does not entirely solve the problem. The mere fact that individuals feel morally obliged to act in a particular way cannot give them license to inconvenience others to an arbitrary degree. What makes the cases that Kymlicka presents seem reasonable is the fact that we are extremely sympathetic to many of the values that underlie the patterns of conduct that the minority groups in question want to preserve. It is not an accident that Native claims to special hunting and trapping rights are couched in terms that resonate with many members of the majority culture. They refer to a certain intimacy with nature, a spiritual connection to the land that has been lost in the “disenchanted” non-Native culture. This vocabulary has developed hand-in-hand with the political alliance between many Natives and environmentalists.<sup>23</sup>

The picture is somewhat different when we consider the claims of groups that engage in practices whose underlying rationale is rejected by other members of the society. For instance, the refusal of members of a certain Christian sect to accept blood transfusions is widely regarded as a choice, even though it is mandatory for its members. Adherents of that faith are allowed to refuse blood, but they are also regarded as solely responsible for the consequences. There has never been any suggestion that they be compensated for their lowered life-expectancy. The issue has become more difficult recently, because members of this sect have begun demanding alternatives to transfusion that can be extremely costly. It is not clear that public health care systems should be obliged to provide such therapies for free, since this would amount to asking members of the majority society to pay the costs associated with what many regard as an irresponsible religious doctrine.

The problem that arises involves what Bernard Williams calls “moral self-indulgence.”<sup>24</sup> It is possible for individuals, through excessive concern for their own moral integrity, to disregard the costs that their actions place upon others. Kant’s example of the man who will not tell a lie, even though it may cost someone their life, seems to be of this type. The case of an individual who refuses a blood transfusion that would cost a few dollars, but as a result consumes hundreds of thousands of dollars in an intensive care unit, is arguably doing the same thing. The implication is that even when agents act morally, it is still possible for them to behave in a way that exhibits unreasonable disregard for the interests of others.

The point that is significant for our purposes is that the extent to which an agent’s actions exhibit an unreasonable disregard for the interests of others must be judged by *different standards*, depending upon whether it is governed by self-interest or a sense of moral obligation. Clearly, individuals are willing to make much greater accommodation for others when their conduct is moral. But greater accommodation cannot possibly be unlimited. Most liberals draw the line by saying that the values underlying the pattern of action must be “reasonable,” but this is usually interpreted in such a way as to mean little more than “not incoherent.”<sup>25</sup> I am not convinced that it is possible to rest content with such a weak constraint.

When two people encounter a conflict of interest, deciding which individual should cede to the other will require determining the relative *importance* of their respective interests. When both agents are acting instrumentally this is easy to ascertain – one gradually increases the opportunity cost of each action until one individual drops out. One of the reasons that Dworkin uses an auction to allocate resources is that auctioning is a mechanism that gives all participants an incentive to reveal their sincere preferences, and then allocates goods to those who want them most. However, there is no mechanism that can achieve a comparable result in the case of moral action, since it may not be possible to gauge the seriousness of an individual's moral commitments by modifying her external circumstances. But the possibility of moral self-indulgence – not to mention the strategic use of moral norms – means that to “treat them all as equally serious” cannot be a serious option. The only alternative, I would argue, is for agents to evaluate directly the substantive merit of the reasons that underlie a particular set of moral commitments.

This is where the politics of recognition fits into the theory of distributive justice. Because there can be no simple “revelation mechanism” that will prompt agents to disclose the intensity or seriousness of their moral commitments, the only alternative is to engage in a dialogue aimed at reaching an understanding and appreciation of the values that animate the cultural practices of all parties. It is this sort of engagement that proponents of the “politics of recognition” have been calling for. Naturally, achieving this sort of mutual recognition does not mean that at the end of the day agents will agree about the nature of the good life. What counts is simply that they find a way of situating their values within a shared horizon of significance.<sup>26</sup> Only once this has been done can members of the society proceed to determine fair terms of cooperation, terms that provide reasonable accommodation for the disagreements that divide them.

One reason that I think it will be impossible to avoid this sort of substantive engagement with the value-systems of others is that just as any conception of distributive justice must be responsive to the intensity of every preference, so it must be responsive to the relative significance of every practice *for its practitioners*. Even though a whole system of religious belief may qualify as a “reasonable comprehensive doctrine,” not all of its practices will be of equal importance. This means that while it may be reasonable to inconvenience others when it comes to ensuring the continuity of core religious observances (such as the Sunday mass), it may be unreasonable to inconvenience them in order to maintain a variety of peripheral practices (such as ringing church bells Sunday morning). Part of the reason that people are unsympathetic to those who reject blood transfusions, for instance, is that many have trouble believing that it could be a central component of their spiritual life (since the prohibition stems from a metaphorical reading of a single biblical passage). The fact that members of the faith *say* it is central cannot be taken at face value, particularly since religious fundamentalists routinely claim that all of their practices are of equal and paramount significance

(although when push comes to shove, they invariably turn out not to be).<sup>27</sup> It is not feasible to offer blanket “respect” to a whole religion or culture, including all of its practices, for the same reason that it is not feasible to grant an individual all of her desires. The need to make case-by-case judgments on these practices makes it difficult to see how reasonable terms of interaction could be established without substantive engagement with their underlying system of values, since it is ultimately this system of values that determines the significance of the various practices.

This sort of evaluative stance is in fact already implicit in the positions that Roemer and Kymlicka advance. In order to make their views plausible, both theorists effectively rig their procedures in such a way as to only admit minority groups whose claims they find sympathetic. With Roemer this jury-rigging is explicit: it corresponds to the “pragmatic” component of his theory. Rather than fix the sociological types once and for all, he suggests that members of the society should decide for themselves on a list of circumstances that they feel affect behavior, but are outside the agent’s control.<sup>28</sup> However, since we tend to regard any action motivated by values that we share as necessary, and an action motivated by values we condemn as arbitrary or irrational, the selection of types will simply reflect the substantive value-commitments of citizens. Kymlicka slips in a direct preference for substantive liberal values by exploiting an ambiguity in his claim that cultures provide a “context of choice.”<sup>29</sup> This is initially introduced as a generic property of all cultures – here “context of choice” means simply that by providing a system of shared values, culture allows agents to develop the capacity for strong evaluation. However, Kymlicka routinely glosses this by saying that a given cultural context only allows for “meaningful” choice when it respects the basic rights and freedoms that are normally taken to be essential for the specifically liberal notion of *autonomous* choice.<sup>30</sup> This then makes it possible to dismiss the claims of people with unsympathetic values on the technical grounds that their culture does not provide its members with a “real” context of choice.

What all of this suggests is that agents are only able to develop a stable framework for social justice and cooperation *after* they have reached some kind of mutual understanding about substantive questions of value. Both Roemer’s and Kymlicka’s proposals are plausible only because they tacitly rely upon a background understanding that members of our society share about the relative significance of the values underlying a variety of contemporary cultural and religious conflicts. However, their own theories fail to acknowledge the need for a procedure to bring about this background understanding (and some theorists, like Rawls, deny that there is such a need). As a result, the liberal “strategy of avoidance” quickly turns into an “ethics of inarticulacy.”<sup>31</sup>

If the need for mutual understanding and recognition is taken seriously, it is probably safe to say that the attempt to formulate a theory of distributive justice cannot succeed when conducted at the usual level of abstraction. Since any egalitarian regime will differentiate among its citizens against a background

understanding of the relationship between their values and practices, and this understanding will be the product of historically contingent patterns of mutual recognition, it is too ambitious to suppose that a single formula could capture the demands that equality places upon citizens in the abstract. This means that the politics of recognition must be assigned a more prominent role in liberal conceptions of justice than has often been supposed. If one can only specify how the ideal of equality is to be instantiated once a fusion of horizons has been achieved over substantive questions of value, then an enormous amount of groundwork will have to be done before it will be possible to seriously contemplate implementing more than a rough form of distributive justice. And any distributive schemes that are developed will most likely need to be tailored to meet the specific requirements of particular societies at particular points in time.

In cases where societies are still divided by cultural misunderstanding, issues of distributive justice can only be seriously addressed in domains of interaction where agents adopt primarily instrumental orientations. As far as promoting intercultural understanding, the best that liberalism can contribute is to require that the basic political structure satisfy the structural conditions under which differences over basic questions of value can be mediated in a way that is roughly acceptable to all. This means that conditions of symmetry and publicity be respected, that all parties be motivated to participate, and so on. These sorts of "liberal" institutions do not allow us to circumvent or avoid value-conflict. They provide the framework within which value-conflict can be mediated, in order to lay the foundations for the development of a society that can make a reasonable attempt at achieving equality among its citizens.

#### NOTES

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1. John Roemer, "A Pragmatic Theory of Responsibility for the Egalitarian Planner," *Philosophy and Public Affairs* 22 (1993): 146–166; and idem, *Theories of Distributive Justice* (Cambridge MA: Harvard University Press, 1996). Will Kymlicka, *Liberalism, Community and Culture* (Oxford: Clarendon, 1989). On multinational states, idem, *Multicultural Citizenship* (Oxford Clarendon, 1995).

2. Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990); Charles Taylor, "The Politics of Recognition," in Amy Gutmann, ed., *Multiculturalism* (Princeton: Princeton University Press, 1994).

3. Ronald Dworkin, "What is Equality? Part 1: Equality of Welfare," *Philosophy and Public Affairs*, 10 (1981):185–246; idem, "What is Equality? Part 2: Equality of Resources," *Philosophy and Public Affairs*, 10 (1981): 283–345.

4. Here I have in mind the sort of project outlined by Nancy Fraser, "From Redistribution to Recognition? Dilemmas of Justice in a 'Postsocialist' Age," *New Left Review* 212 (1995): 68–93.

5. Dworkin, "What is Equality? Part 2: Equality of Resources," 294.

6. *Ibid.*, 285–89.

7. *Ibid.*, 303. Here the appeal is to something like the "second-order desire" model of agency.

See Harry Frankfurt, "Freedom of the Will and the Concept of the Person," in *The Importance of What We Care About* (Cambridge: Cambridge University Press, 1988).

8. The insurance market is a *revelation mechanism* for second-order preferences, i.e., it gives every agent an incentive to report truthfully which preferences he or she identifies with. In this respect, it functions in the same way that the resource auction does for first-order preferences.

9. See Charles Taylor, "What is Human Agency?" in *Human Agency and Language: Philosophical Papers Vol. 1* (Cambridge: Cambridge University Press, 1985).

10. Roemer, *Theories of Distributive Justice*, 277.

11. This proposal is not as far-fetched as it may sound. Insurance companies routinely partition clients according to gender, age, residential location, etc., and adjust premiums accordingly. The same type of arrangement could be implemented in the tax system. The Canadian tax system, for instance, currently partitions agents according to age, income level, jurisdiction and location of residence, and grants special tax advantages to senior citizens and residents of the northern territories. There is no practical reason why this partition could not be further refined in order to advance a more generalized egalitarian project.

12. Roemer develops a half-hearted response to this objection in "A Pragmatic Theory of Responsibility for the Egalitarian Planner," 164.

13. Moral hazard refers to a situation in which an agent, once fully insured against a particular loss, begins to engage in riskier behaviour, thereby making the loss more likely to occur. When more than one agent in the same insurance scheme is placed in a position of moral hazard, the interaction has the structure of a multi-player Prisoners' Dilemma (i.e., the strategic equilibrium is suboptimal).

14. Kymlicka, *Liberalism, Community and Culture*, 165.

15. In fact, he regards the revisability of preferences as providing the point of liberal freedoms.

16. It should be noted that the position I develop is not the usual interpretation of Kymlicka's view. Commentators have tended to focus on Kymlicka's more Rawlsian formulation of the position, where he claims that cultural membership is a type of primary good. However, since Kymlicka leaves the defense of the claim as an exercise for the reader (*Liberalism, Community and Culture*, 187), I am inclined to rely only on the argument that he does provide, which is formulated entirely with Dworkin's framework. As a result, I do not treat cultural membership as a non-fungible resource (as the Rawlsian version suggests), but as a factor determining the efficiency of resource-welfare conversion.

17. *Ibid.*, 189.

18. *Ibid.*

19. See Max Weber, *Economy and Society*, 2 vols., eds. Guenther Roth and Claus Wittich (Berkeley: University of California Press, 1978), 24–36; also Talcott Parsons, *The Structure of Social Action*, 2 vols. (New York: Free Press, 1968).

20. This is to say that the pattern of conduct is institutionalized (agents are disposed toward it through socialization, and the practice is supported by social sanctions).

21. Kymlicka, *Liberalism, Community and Culture*, 194–5. The tension comes from the emphasis that Kymlicka puts on the revisability of preferences.

22. See James Johnson, "Why Respect Culture?" *American Journal of Political Science* (forthcoming).

23. If there were any danger that traditional hunting practices would drive endangered species into extinction, the willingness to make special accommodations would soon dissipate. Sweden's much-derided attempt to defend its whaling practices through appeal to the integrity of its cultural traditions is a case in point.

24. Bernard Williams, "Utilitarianism and Moral Self-Indulgence" in *Moral Luck* (Cambridge: Cambridge University Press, 1981).

25. Cf. John Rawls, *Political Liberalism* (New York: Columbia University Press), 59.

26. This is the view that has been advanced most persuasively by Charles Taylor. See "The Politics of Recognition," 62–3. Also, *idem*, *Sources of the Self* (Cambridge MA: Harvard University Press, 1989), 53–90.

27. This is not to suggest that individuals are incapable or even unlikely to report honestly the relative significance of their practices. Individuals may also honestly report their preferences. The problem is that any distributive mechanism that took such reports at face value would reward people who made dishonest reports by allowing them to exploit the honest with impunity.

28. Roemer, "A Pragmatic Theory of Responsibility for the Egalitarian Planner," 149.

29. This was pointed out to me by Ashwani Peetush.

30. See, for instance, Kymlicka, *Multicultural Citizenship*, 85.

31. Taylor, *Sources of the Self*, 53.