

## Kymlicka's Argument for Self-Government

In the book *Multicultural Citizenship*, Kymlicka defends the right of a national community to build a substate, autonomous government.<sup>1</sup> This right is included in a package of *group-differentiated* rights for national communities, which includes self-government right, special representation right, and polyethnic right.<sup>2</sup>

Naturally, Kymlicka's justification for self-government right is a part of his larger project to justify the *group-differentiated* rights for national communities.<sup>3</sup> The group-differentiated rights under discussion are meant to protect the interests people have in national culture, membership, and identity. These rights are group-differentiated because, unlike other types of rights assigned to *individual* citizens, they are assigned to *a group or members of the group*.<sup>4</sup> One can enjoy these rights *only* by virtue of being a member of a national minority.

Because Kymlicka's support for the self-government right of a national community is derived from his support for group-differentiated rights, to understand his argument for the right of a national community to establish a substate government, we need to understand his argument for group-differentiated rights first. Kymlicka's argument for this right involves three crucial steps. First, he explains why a national community is singled out. Because the right is group-differentiated according to national membership, Kymlicka has to explain why *national* culture, membership, and identity are significant.<sup>5</sup> That is, he has to explain why we should be concerned with national membership or identity. Second, Kymlicka explains why the usual basic rights or civic liberties assigned

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<sup>1</sup> The right to special representation is the right of a national community to have special representations in legislature. Polyethnic rights are rights that protect people's interest in the practice of their traditions and customs. See Will Kymlicka, *Multicultural Citizenship*, Oxford University Press, 1995.

<sup>2</sup> See Kymlicka, 1995, pp.26-33.

<sup>3</sup> The group-differentiated rights Kymlicka advocates include the right to self-government, the right to special representation, and polyethnic rights. See Will Kymlicka, *Multicultural Citizenship*, Oxford University Press, 1995, pp.26-33.

<sup>4</sup> When I say that group-differentiated rights are assigned to a group or members of the group, some might understand it as suggesting the right-holder is the national group as a whole but not the individual members. However, this is not the case. According to Kymlicka, "what matter is not whether the right is collective (as opposed to individual), but that it is group-differentiated... Whether these group-specific rights are attributed to individual Indians or Indian bands/tribes is, for critics, largely irrelevant." In short, Kymlicka need not assume that the right-holder is the collective. See Kymlicka, 1995, pp.45-48.

<sup>5</sup> There can be other types of group-differentiated rights, too. For instance, women's right to have special representation in legislature, or elder person's right to certain social welfare.

to individuals are not enough to protect the relevant interests. That is, he explains why *individual* rights are not enough and why we also need rights that are *group-specific* according to national membership. Lastly, Kymlicka explains why a national community should be granted the right to self-government in particular.

Due to the length of the paper, I cannot discuss Kymlicka's argument for national identity in detail. Instead, I will assume that his arguments successfully justify the value of national identity. The question I am interested in is, *suppose national identity is indeed important, does that justify the right of a national community to establish a substate government?*

While the first step explains why national identity matters, the second step explains why this particular type of groups should be granted certain group-differentiated rights. This step explains why the relevant interests should be protected and recognized in institutional settings. Kymlicka's argument for recognizing group-differentiated rights for a national community is composed of three different arguments: the value of cultural diversity, the role of historical agreements, and the equality argument.<sup>6</sup> Among these three arguments, the equality argument is the most crucial one.

First, the diversity argument appeals to interest the larger society has in *cultural diversity*. Cultural diversity allows members of the society to have more options and is therefore regarded as valuable. Polyethnic groups often appeal to the value of cultural diversity to defend polyethnic rights.<sup>7</sup> However, this argument cannot explain why a national community should be allowed to establish an autonomous government or why it should be granted rights to protect its culture, as these rights would limit cultural diversity *within* the national community and restrict the options available to its own members.<sup>8</sup> In addition, Kymlicka suggests that “[b]ecause it appeals to the interests of the larger society, it cannot explain why minorities should be able to decide for themselves whether or how to maintain their culture.”<sup>9</sup> Thus, even if the diversity argument supports polyethnic rights, it does not provide a solid defense for the right of a national community

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<sup>6</sup> See Kymlicka, 1995, pp. 107-30.

<sup>7</sup> Polyethnic rights refer to rights of polyethnic groups to practice their culture. An example is the exemption of motorcycle helmet laws for Sikhs in Canada. For a detailed discussion, see Kymlicka, 1995, pp.30-31.

<sup>8</sup> See Kymlicka, 1995, p.123.

<sup>9</sup> See Kymlicka, 1995, p.123.

to self-government.

What about historical agreements? While Moore's historical argument focuses on the *historical claim* an indigenous community has over the territory of its historical residence, Kymlicka's historical argument focuses on the role of *historical agreements* actually made between various national communities and the current society.<sup>10</sup> Kymlicka points out that these agreements were often blatantly ignored or unilaterally suspended by the current government.<sup>11</sup> A reasonable response to this phenomenon would be to honor these historical agreements. However, according to Kymlicka, many historical agreements are unfair or outdated. Thus, the value and status of these agreements is not clear. Consequently, we should not rely solely on historical agreements. We have to take into consideration what the principle of equality would say about these agreements. Kymlicka thus suggests that historical agreements should be reinterpreted, and that when talking about group-differentiated rights, both the principle of equality and the historical arguments should be taken into account.

Because the diversity argument cannot justify a national community's right to self-government, and because historical agreements do not provide helpful guidance, Kymlicka's argument for group-differentiated rights depends crucially on the equality argument. The equality argument appeals to the principle of equality. It argues that members of a national community are treated unequally in a number of cases and that this inequality needs to be redressed.

To show how members of a national community are treated unequally as a group, Kymlicka points out the problems ignored by the *benign neglect view*.<sup>12</sup> According to this view, because individual citizens are given equal rights and resources, the government should not give any national community any special, group-specific right, because the type of arrangement would undermine equality and give members of the community an unfair advantage. We should neglect the cultural differences among them, and if anyone wants to preserve her national culture, they should use their own rights and resources to protect it.

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<sup>10</sup> Moore criticizes Kymlicka for failing to recognize the historical claims indigenous communities have. See Moore, 2003, p. 92.

<sup>11</sup> See Kymlicka, 1995, p.116.

<sup>12</sup> See Kymlicka, 1995, pp.107-8.

However, Kymlicka argues that the benign neglect view is not benign at all because it actually leaves a national community in a disadvantageous position.

[g]overnment decisions on languages, internal boundaries, public holidays, and state symbols unavoidably involve recognizing, accommodating, and supporting the needs and identities of particular ethnic and national groups. *The state unavoidably promotes certain cultural identities, and thereby disadvantages others.* [italic added]<sup>13</sup>

While the benign neglect view suggests that equal rights and resources for individual citizens are enough for liberal equality, Kymlicka shows us specific cases in which members of national minority are treated unequally *even if* they have the same rights and resources as everyone else. In other words, with regard to certain social institutions, policies, or affairs, it is impossible for a society to refrain from making a decision and remain completely (culture-)neutral. In those cases, social institutions cannot avoid favoring one national group, often the majority group, over the others.<sup>14</sup> As a result, those whose national identity is different from the majority would be left in a disadvantageous position: they are often outvoted by the majority, their language and culture are marginalized and in decline. To maintain their national culture, members of the minority group have to spend a part of their resources on the preservation of their culture. This is a cost members of the majority do not have to bear. They can take for granted the recognition of their language and culture.<sup>15</sup>

Consequently, we have reason to *redress the inequality* arising from national membership. Because one incurs this disadvantage as a result of one's national membership, only members of the relevant national communities suffer from this inequality. This is why the relevant rights are group-differentiated according to national membership.

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<sup>13</sup> See Kymlicka, 1995, p.108.

<sup>14</sup> See Kymlicka, 1995, pp.108-115.

<sup>15</sup> Kymlicka makes a similar point in the book *Liberalism, Community, and Culture*. There, Kymlicka asks us to consider the circumstances of two boys with different national membership. One boy is from the Anglophone community, which is the dominant majority group in Canada. The other is an Inuit boy, whose community is a minority and its culture in decline. Even if we give these two boys equal rights and resources, we can imagine that, to protect his culture from decline, the Inuit boy has to spend more resources on saving his culture, and this is a price that the Anglophone boy does not have to pay. See Will Kymlicka, "Equality for Minority Cultures", in *Liberalism, Community, and Culture*, Oxford University Press, 1989, pp.189.

So far, the argument explains why, in addition to the equal rights granted to each individual citizen, equality requires that we recognize rights that are group-specific according to national membership.<sup>16</sup> Kymlicka's argument demonstrates clearly how members of a national community can suffer from inequality by virtue of their national membership. This provides a solid ground for redressing this particular inequality, which happens only to members of a minority group. Individual rights are not enough to offset this inequality. Group-differentiated rights should be in place as well.

Lastly, Kymlicka has to explain why self-government right should be given to a national community. As Moore points out, even if we can prove that a national community is unfairly treated, it does not yet tell us *how* it should be compensated.<sup>17</sup> Likewise, even if we know that members of a national community suffer from inequality as a result of their membership, it does not yet tell us *how we should redress this inequality* or *which institution* should be set up to compensate for their loss.<sup>18</sup> Why, then, does a national group be given the right to build an autonomous government?

We can find a short discussion by Kymlicka on why self-government right is justified. According to him, this is because equality calls for equal benefits and opportunities for different national minorities.

[W]e should aim at ensuring that all national groups have the opportunity to maintain themselves as a distinct culture, if they so choose. This ensures that that good of cultural membership is equally protected for the members of all national groups. In a democratic society, the majority nation will always have its language and societal culture supported, and will have the legislative power to protect its interests in culture-affecting decisions. The question is whether fairness requires that the same benefits and opportunities should be given to national minorities. The answer, I think, is clearly yes.

Hence group-differentiated self-government rights compensate for unequal circumstances which put the members of the minority cultures at a systemic disadvantage in the cultural market-place, regardless of their personal choices in life.<sup>19</sup>

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<sup>16</sup> Kymlicka argues that "it is legitimate, and indeed unavoidable, to supplement traditional human rights with minority rights. A comprehensive theory of justice in a multicultural state will include both universal rights, assigned to individuals regardless of group membership, and certain group-differentiated rights, or 'special status' for minority cultures." See Kymlicka, 1995, p.6.

<sup>17</sup> See Kymlicka, 1995, p.5.

<sup>18</sup> Several philosophers argue that we cannot defend for a particular institution just by merely defending the intrinsic worth of an important value. See Gans, p.41; Marmor 233-4.; Tamir .

<sup>19</sup> See Kymlicka, 1995,p.113.

Therefore, to a national community the equal opportunity to protect its culture, and to give its members equal benefit as the majority, a national community should be given the right to self-government.

Does Kymlicka's argument successfully justify the right of a national community to establish a substate government?

Kymlicka lists specific cases in which a national minority suffers from inequality. As expected, the principle of equality requires that we redress these inequalities. Even so, it is not clear why this entails that a national community should be granted the right to establish a substate government. To redress inequality, other measures of compensation are available. For instance, if a national minority lacks substantive political power, they can be given the right to special representation in legislature. Their language should be recognized in governmental institutions and taught in school. Additionally, because their culture, traditions, and practices are in decline, they should be granted rights to protect the relevant interests. A society can treat different national groups equally by recognize all of their languages and culture officially.<sup>20</sup> For every disadvantage a national group faces, we can, in principle, find a corresponding compensation to redress that inequality. Why is self-government right necessary?

Buchanan raises a similar objection against Kymlicka's package of group-differentiated right. Kymlicka holds that a national community should be granted a package of group-differentiated rights, which include special representation, self-government, and polyethnic rights. However, Buchanan questions if all of them are necessary:

[e]ither 'polyethnic rights' protect a culture well enough so that it can supply a meaningful context for choice for its members or they do not. If they do, then why do any cultural groups, including nations, need rights of self-government in addition? If 'polyethnic' rights do not protect cultures well enough to provide a meaningful context for choice, then every cultural group must have self-

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<sup>20</sup> Or, a society can treat different national groups equally by recognize none of their languages, as is the case in Singapore. In Singapore, to show equal concern for all the ethnic groups in the society—Chinese, Malay, and Indian--- the official language is English, which is not the native language for any of the ethnic groups. The important holidays for each of the national community are equally recognized.

government, and ‘polyethnic rights’ are simply a waste of time.<sup>21</sup>

In any case, Kymlicka has to explain what it is that self-government right can do but polyethnic rights cannot. Otherwise, if polyethnic rights provide adequate protection for a national culture, it is not clear why a national community is also entitled to the right to self-government. It may be a good policy for the government, but it is barely a *right*.

Possibly, Kymlicka can respond to this challenge by making a distinction between two different types of goods that are unequally distributed among different national communities: those that can be compensated without self-government right, and those that *cannot* be compensated without self-government right. Inequality is the result of an unequal distribution of goods. The unequal distribution of the goods of language, culture, and political power among different national communities can be redressed by granting a national community special representation and polyethnic rights. These rights are enough to make sure that the disadvantages a national group incurs are made up for and that the national group has equal rights and resources as the majority group.

On the other hand, there is also a second type of good that is unequally distributed among different national communities. Inequality in this case cannot be redressed without self-government right. To justify a national community’s right to self-government, Kymlicka has to explain what exactly this good is. The answer to this question holds the key to the justification of self-government right. What exactly is this good?

In Kymlicka’s discussion, it is not clear what this particular type of good could be. Nonetheless, there are two clues one can follow to figure out the answer. First, the answer can possibly be found in an analysis of what equal *benefit, opportunity, or circumstance* for different national communities entail. Kymlicka talks about equal “opportunity for all national groups to preserve their cultures”, equal distribution of “the good of cultural membership”, and compensating for “unequal circumstances”. However, he does not explain what he means by those terms. Thus, it still is not clear how these goods entail the right to self-government.

Nevertheless, there is a second clue one can work on, namely, the right Kymlicka intends to argue for—the right to self-government. Because this right supposed to offset

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<sup>21</sup> See Buchanan, “What is so Special about Nations?” in *Rethinking Nationalism*, Couture (ed.), University of Calgary Press, 1996, p.301.

some benefit that the majority group receives but the minority group does not, we may reasonably infer that Kymlicka believes that the majority group is enjoying the benefit of self-government in some sense, and that the same benefit should also be granted to a national community. This clue provides a more straightforward explanation of how self-government right could be justified.

I am not sure if this is the explanation Kymlicka has in mind. This step assumes that the current state involves the recognition of the dominant national community. This is a questionable assumption because, as was pointed out earlier, the state can recognize all of the languages and cultures of different national communities. If a state officially recognizes all the national communities in its political institutions, it is not clear in what sense can a minority group claim that its culture is not adequately recognized. Presumably, the only thing the group can complain would be that the majority has its own state, or a state where it is the majority, but the minority does not.

However, if this assumption was right, it would entail not just the right of a national minority to establish a substate government, but perhaps also the right to build its own state. If equal recognition of national identity entails equal benefits and opportunities, shouldn't a national community also be given the right to build a *state*? This would give them even more substantive power over their own affairs and ensure that members of a national community receive the same benefit and opportunities. It is not clear why we should stop at the right to sub-state government. The right to build a state can more closely approximate the ideal of equal treatment. Kymlicka would not be bothered by this challenge, because in his discussion of self-government right, he does suggest that we should be more open to the option of secession.<sup>22</sup>

Or, alternatively, Kymlicka should draw the conclusion that a multination state should adopt the confederation system, such as the one adopted in Switzerland, where each of the constituent community is treated equally, as each has its own sovereign government, and at the state level all of them are equally recognized.

In any case, if equal recognition requires that each national community share the same benefit, then, to be consistent, Kymlicka has to hold that either a national group also has the right to establish a state, or that any multination state should adopt the

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<sup>22</sup> See Kymlicka, 1995, p.186.

confederation system where each constituent national community has its own autonomous government and equal political power in the state level. The conclusion is different from what Kymlicka's suggestion.

In addition, even if this theory of equal recognition can explain how self-government right can be justified, it still needs an additional explanation. That is, Kymlicka needs to explain why, just because a national group is the majority in its society, the state represents the recognition of its culture. He needs to explain why, even if the state recognize the language and culture of the group in political institutions, and grants it special representation and polyethnic rights, the group is still not adequately recognized. Kymlicka needs to explain why does equal recognition of different national communities require not just equal recognition of language and culture in governmental institutions (i.e., special representation and polyethnic rights), but also the right to self-government.