

Group Rights and the Protection of Individual Autonomy

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LIDA KATSANOULI, AUG 21 2020

If one were to consider individual autonomy, or unimpeded freedom of agency, as the most significant freedom that a liberal society should secure, then group-differentiated rights play a vital role in securing that individual right. Such a liberal society would be ruled by a neutral government that does not endorse or penalize any particular conceptions of the good life (Kymlicka, 1989, p. 883). Yet, this kind of “welfare liberalism” also allows for state intervention that aims towards sufficient social options and resources for everyone (McDonald, 1991, p. 224). Group-differentiated rights intervene in society’s cultural marketplace to protect a particular minority culture within a pluralistic context. The groups that qualify to be guarded under such rights are those functioning under a societal culture common to the members of the group, which is one encompassing a large variety of aspects of life, forming a comprehensive conception of the good. The common culture is usually enhanced by common language, history, traditions, and conventions, and the group’s membership is based on a mutual recognition of belonging (Margalit & Raz, 1990).

In order to ascertain whether group-differentiated rights are necessary to protect individual autonomy, I will first establish the importance of such a common culture for an individual and their autonomy. I will then argue that minority cultures are best protected through group-differentiated rights and elaborate on the kinds of group rights that are explicitly necessary to protect individual autonomy.

The kind of culture that is worth protecting by group-differentiated rights is best characterised by Will Kymlicka as a “societal culture” and succinctly defined by Laura Reidel as “a set of shared meanings, norms, and practices that form a comprehensive world view that serves to unite a group and contribute to the identity of its members” (2010, p. 68). Advocates for and against group-differentiated rights acknowledge the importance of culture for the well-being of an individual. However, they attribute to it different degrees of importance. The most passionate advocates for an inherent tie between culture and autonomy are the communitarians. Michael McDonald insists on the formation of an individual’s identity as an involuntary and inevitable social process; he argues that the choices we make are limited to the options that socialisation and acculturation have created. In other words, he does not recognise the individual as able to act outside of their cultural context. Secondly, the more pragmatic advocates for cultural value endorse the idea that culture offers meaningful options by providing “the spectacles through which we identify experiences as valuable” (Kymlicka, 1996, p. 83), but also accept the possibility that some, although few, may identify as cosmopolitan individuals with a global, multi-layered citizenship. The pragmatists give more power to the individual to decide whether or not culture is valuable to them. At the other end of the spectrum belong advocates of modern cosmopolitanism. For instance, Jeremy Waldron does not deny that individuals infer meaningful options from society; however, he deems the idea of a singular culture as a relic. Options and resources, like materials, exist in a mongrel fashion within a global context. Therefore, preserving a culture that would not survive in a free society is perceived as a pointless task, since individuals are able to live meaningful lives without membership of a particular culture (Reidel, 2010).

Establishing the importance of societal cultures for an individual’s autonomy is the first step to determine whether group-differentiated rights are necessary; thus, I ought to evaluate the aforementioned three degrees within their potential legal context. I agree that individuals have less agency over their choices, since their culture, which could be multifaceted, is what confers their options within a specific conception of the good (Lyotard, 1979, p. 19; Nietzsche, 2013, p. 35). Nevertheless, the communitarian perspective suggests the legal classification of cultural groups is above or equal to individuals. This is incompatible with the values of a liberal society, in which the individual is

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considered the ultimate unit (Jacobs, 1991). Therefore, the communitarian value of culture is no more useful than an intellectual observation.

Moving on in this vein, the limited worth attributed to culture by cosmopolitanism appears to be an abstract observation, but an untrue one. Firstly, it is rare that people fluctuate between cultures, and even rarer that this is voluntary and without consequent feelings of alienation (Kymlicka, 1996). Secondly, because of the fact that modernisation and globalisation assist the diffusion of liberal cultures, cosmopolitanism begs the question that individuals subsequently identify as global citizens, as opposed to Catalan or Jewish (Kymlicka, 1996). Finally, options and resources are not available “like materials”, but are charged with a particular cultural context when used by a member of the respective community. Certain cultural traits can be available to a global audience, but this does not mean that we lose our wilfulness to maintain the conception of the good of our own group. Moreover, when one treats culture as a consumer good, it has ceased to be an identity-conferring element for that individual. To exemplify this simplistically, just because the average French woman eats Vietnamese food and speaks English, that does not make her feel any less French than if she were oblivious to all other cultures but her own. It makes no difference that I am aware and have access to all these different cultures within my vicinity; my identity persists.

These two polar observations lead to the most relevant value of culture. Even though I theoretically argue for an intrinsic influence of culture on individual autonomy, within a legal context I argue for letting individuals consider themselves as free agents. Namely, John Rawls’s two aspects of freedom ought to be the assumptions made by the state and society. Firstly, individuals should be seen as a self-originating source of claims. Secondly, we ought to “recognize one another as having the moral power to have a conception of the good” and to revise and change it when necessary (Rawls, 1980, p. 544). For instance, a Christian baptised Welsh man should be able to identify as a British atheist. Therefore, I agree with Kymlicka that the law and the state should allow individuals to self-proclaim the degree of importance culture has on their autonomy, whilst always ensuring they have the option to maintain a firm association with a singular societal culture.

Consequently, to protect the individual’s autonomous choice the state and society have a responsibility to protect those groups whose culture is disadvantaged, either by imbalanced numbers or by direct oppression, through group-differentiated rights. There are, however, multiple obstacles to pass before accepting the idea of group-differentiated rights. The first objection is that we should leave cultures in the fate of the free cultural marketplace. As Michael Hartney contends, the better ways of life will endure without state intervention. This claim is false. Cultures that need protecting are usually within a state where there is a dominant majority group. Therefore, a stand-off in the cultural marketplace would not determine the better way of life, but simply represent the most numerically dominant one. This would eventually lead to the weakening of the structure that supports cultural pluralism (Kymlicka, 1989, p. 894). Hence, individuals should have the option and the resources to revise their group without social pressures in order to preserve their autonomy (Margalit & Raz, 1990). It is, thus, necessary to protect endangered groups’ culture. The best way to do so is in the form of rights because, as Hartney ironically states, the goods that generate rights are those “central to the well-being of the individuals” (1991, p. 304). The well-being of the individual is maintained when their culture is respected in the wider society; respect for a person is inevitably linked to respect for their culture and any other part of their self-proclaimed identity (McDonald, 1991).

The second objection to the proposed thesis accepts that minority cultures ought to be protected by the state to secure individual autonomy but challenges the collective nature of those rights. This objection essentially argues that groups are best protected through individual rights. This is based on the impression that cultures cannot have collective interests, and, thus, cannot have rights altogether. It is argued that a culture’s purpose is derived solely by the *aggregate* interest of its individual members (Hartney, 1991). Moreover, the value of a culture is not independent of the dignity and autonomy of the individual members (Reidel, 2010). Although I agree that the moral importance of a group does stem from its value to its members, this is neither a direct nor a reductive association. The value of a culture and its group as a whole is greater than the sum of their individuals’ appreciation, and yet it cannot exist without them. Concomitantly, the sum of the members’ interest is not sufficient when considering the potential existence of collective interests. In other words, there are collective interests and values that cannot be reduced to the individual (McDonald, 1991). For instance, the right to speak a language serves an unambiguously collective interest, since the activity requires interaction. Likewise, the USA’s moon landing adds to the country’s international

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respect, however it does not offer any individual advantage other than the one shared in totality amongst Americans (Margalit & Raz, 1990, p. 450). Nevertheless, it is important to note that these collective interests, like the value of a group, would not persist if not on a par with those of the group's individual members. Collective interests, in a liberal society, are derived from and provide more abstract individual interests, such as an individual's interest to be autonomous. Therefore, the value of a group has a mutualistic relationship with a group's value to an individual. This allows for the existence of interests beyond those of individuals, viz. the collective interest to a language or a tradition, making individual rights insufficient and group-differentiated rights a necessity.

The advocates of individual over group-differentiated rights furnish another objection that needs to be addressed: the fear of collective interests and rights impeding on individual freedoms. Reidel points out that assuming cultural survival as always being a legitimate aim can harm individual rights by prioritising groups. This can lead to "undesirable moral consequences" within a group since some rights may prevent further intervention of the state (Hartney, 1991, p. 297). The strongest case for this view is made by feminists concerned with the historical motif of female oppression in most cultures. This oppression happens either through cultural doctrines or simply by the common circumstance of a male majority in power (Okin, 1999). Naturally, this reverses the idea of group-differentiated rights from being necessary to being detrimental for individual autonomy. Yet, Kymlicka provides a sufficient rebuttal to this qualm by adding the proviso that to have freedom *between* groups one must also have freedom *within* groups (1996, p. 152). Kymlicka's group rights function within basic liberal values; the individual is not to be undermined. On the one hand, all groups should be protected from exploitation or oppression. On the other hand, liberal individual liberties ought to be protected within groups to preserve the individual's capacity to choose and question traditional practices. Group rights ought to take both these limitations under consideration, and, in so doing, make the objection irrelevant. He also points out that both feminism and multiculturalism object to the inadequacy of the traditional liberal conception of individual rights to secure individual autonomy. Both of these cases benefit from state intervention without contradiction. Therefore, such "undesirable moral consequences" can be prevented when group-differentiated rights are taken in conjunction with Kymlicka's proviso. It, thus, remains that group-differentiated rights are the best way to protect individual autonomy.

However, depending on the types of freedoms the group-differentiated rights account for, there are occasions when individual autonomy may rightly be temporarily questioned. I shall first identify the rights which do not question the thesis that group-differentiated rights are necessary for individual autonomy. To do so it is useful to look at individual autonomy as the abstract right that is to be protected by the respective group-differentiated rights. Jacobs defines abstract rights as those representing different liberal concepts that can only apply to individuals, like that of autonomy and integrity. From these come derivative rights which constitute arguments behind specific policies (1991, p. 381). Parallel to Kymlicka, he establishes that individual integrity, which itself stems from individual autonomy, requires the preservation of the integrity of one's group. The derivative rights that follow these abstract rights he labels *substantial collective rights*, as opposed to *political rights*. Substantial collective rights are rights to either "claims, powers, liberties or immunities" (1991, p. 375). An example of such rights is the Official Language Act in Quebec which declares French as the official language in the Canadian province. These rights do not conflict with the individual members assuming that the decision-making process was in some way collective. This policy secures the culture of the Canadian French minority, and thus the individual option of current and future generations to identify and evaluate with that culture; it safeguards their individual autonomy.

Political rights, however, have the capacity to impede on the group's individual freedoms, especially that of women. Such rights usually secure the right to national self-determination, or self-government. These rights are necessary when the historical context and the present state of oppression require sensitive and particular treatment. Some multiculturalists argue that such group-differentiated rights should be applied to indigenous groups (Kymlicka, 1996; Spinner-Halev, 2001). The longevity and the nature of their oppression, either due to colonialism or settlements, brands them as a separate body not part of the liberal society. The Palestinian population within and surrounding Israel is a good example of such oppression leading to the right of self-governance without, yet, being a separate state. Another example is Gibraltar, which attained full self-governance in 1969. On this occasion, the liberal or illiberal character of their culture should not be taken into consideration. I understand the individual autonomy of the members in possibly non-liberal terms, but through the comprehensive doctrine of their own culture. Because of their severe oppression, internal liberalisation cannot be left at the hands of the oppressor, which is usually the state or the

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dominant majority. Following the idea that there is no such thing as natural or universal morality, I consider this an acceptable treatment of non-liberal societies. Since I do not consider such indigenous populations to be a part of the liberal society, their individual autonomy, only on this occasion, is transcended into a group autonomy requiring self-governance.

Despite the existence of multiple well-argued objections, I have insisted that group-differentiated rights are necessary for individual autonomy. Nevertheless, there are certain requirements for this to remain accurate and it is worth revising them. Firstly, this is true within a liberal society allowing for virtuous state intervention. Secondly, even by embracing globalisation, our world is separated into cultures, and those are necessary for an individual's identity. Thirdly, it is vital that cultures are protected by substantial collective rights, and on the special occasion of indigenous cultures, by political rights. The logical sequence of these three steps conclude to make these rights a necessity for individual autonomy. However, it is likely that classical liberals would simply disregard my first step. According to them, state intervention is an unacceptable act and the fundamental societal value is toleration, not autonomy. If we accept this, the only way to remotely secure individual autonomy would be by the individual right of freedom of association (Kukathas, 1992). Therefore, unless one identifies with welfare liberalism, group-differentiated rights are not an option.

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