Political Liberalism, Social Pluralism, and Group Conflict

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ABSTRACT

This dissertation develops a political liberal approach to multiculturalism as an
alternative to its dismissal by some egalitarian liberals and its celebration by some
multicultural liberals.

Some egalitarian liberals overstate the liberal tension with group-specific claims,
disregard the role of culture in a person’s life, and exaggerate the propensity of group-
specific claims to exacerbate conflict. Confusing religion with culture, they assign to
religion the status of an all purpose good that liberals traditionally assign to income and
wealth. While political liberals require that the state grant exemptions to religious
practices that violate uniform rules, these egalitarian liberals do not.

Some multicultural liberals overstate the liberal failure to accommodate group-
specific political claims, exaggerate the role of culture in a person’s life, and ignore the
invented nature of culture. Confusing culture with religion, they assign to culture the
moral weight liberals traditionally assign to religion. Political liberals, however, assign
to culture the same social weight they assign to a person’s family, firm, neighborhood
and other associations. Political liberals also distinguish encompassing groups, such as
language-nations or factory-towns, whose members primarily live, work and socialize
with their own group, from other groups, whose members do not. The former have
greater social weight, though not moral weight, than the latter. This leads political
liberals to require state support for encompassing groups to adjust to new social and
economic circumstances, irrespective of whether they are cultural. Unlike some
multicultural liberals, political liberals do not require that such adjustment lead to the
maintenance of the encompassing group because it is a cultural community.

Finally, political liberals distinguish the role of reasonable differences over how
to treat others as equals, from that of hate and greed in aggravating group conflict. This
leads to a less pessimistic view about the prospects for resolving group conflict. By
looking at reasonable differences among liberals over political claims in two group
conflicts - Tamil self-determination in Sri Lanka and Black political representation in the
United States - a political liberal approach to cultural pluralism can contribute to the
design of just institutions that resolve group conflict.

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We cannot be excused from living together.

In May 1999, Ali Reja, a 77-year-old Albanian living in Pristina the capital of Kosovo, was wandering the streets looking for some milk for his sick wife Iqbala. He responded with these words to a reporter querying him about the war in Kosovo and prospects for peace between Albanians and Serbs.\(^1\) Ali Reja, is an Albanian who fought against the Nazis in WWII, survived Serbia’s ethnic cleansing of Albanians in Kosovo and NATO’s bombing of Pristina. His one sentence captures profoundly and succinctly, the three basic ideas that form the basis of the hundreds of pages of tortured and turgid prose of this dissertation. The first is the fact of social pluralism. Whether we celebrate it, accept it, tolerate it or endure it, we all live in a world, continents, regions, states, provinces, cities and neighborhoods where people from diverse religions, cultures, races and ethnic groups live together and will continue to do so. The second is the normative need to accommodate social pluralism within a political community. If we need to live together in societies where we participate in different religious, cultural, racial and ethnic communities, then we must cultivate attitudes and structures that will enable us to do so. The third idea is that such attitudes and structures will invariably be based on the commitment to political equality. If we seek to live as equals in political communities that are socially plural, we cannot evade the impact membership in social groups will have on individual equality.

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Acknowledgments

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When all is said and done, no thesis gets written without a thesis committee. You need a thesis committee to encourage, prod, guide, inspire, support, discipline, and teach you. I was fortunate to have the privilege of learning from committee members who did all of this. I will always be grateful for the opportunity to have studied comparative politics from the late Prof. Myron Weiner. He taught me so much about a part of the world that I thought I did not have to learn about. In teaching me about South Asia, he also taught me about other parts of the world. I would never have gotten going on writing without the initial guidance of Prof Stuart White. As a new professor at MIT, Prof. White suggested readings, read my preliminary writings and kept up with my confusions. His clarity of thought challenged me to clarify mine, even if I have not always succeeded. Through his classes on American Politics at MIT, Prof. Ira Katznelson, showed me that I could learn more about American Politics than I thought I could. His commitment to moral scholarship encouraged me to combine normative and empirical analysis. Prof. Katznelson’s humor and wisdom kept me going. But just as
importantly, his gentle admonishment "that it is more important to get it written than to get it right" kept me from going on endlessly.

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This thesis I dedicate to my little niece Kalaivani Tessa Butler - if only we could live in a world of your making. Those moments that we shared were too fleeting, Tessa, to ever ease our pain at your leaving.
Chapter I.

Introduction: Liberalism and Multiculturalism

Cultural pluralism - religious, ethnic and national diversity - within a political community is a fact of social life. Its potential to lead to social tensions and ethnic conflict is a fact of political life. Some politicians, activists and scholars endorse assigning special rights to cultural groups as a way of addressing group conflict. They argue that such rights rectify particular disadvantages experienced by minority groups, enables them to secure reasonable interests, makes them feel included in a political community, and mitigates group conflict. Other politicians, activists and scholars reject assigning special rights to members of minority groups. They argue that assigning rights to cultural groups is not required to secure important interests, leads to privileges for politically influential groups, excludes other groups that are less influential, and exacerbates group conflict. Proponents of group rights may give up on them to placate a resentful majority, while opponents of group rights may grant them to assuage a recalcitrant minority. Still, both see their respective concessions as compromises of justice with practicality in order to secure social peace. These two positions are invariably present in debates about the justice and viability of political arrangements that address the concerns of cultural minorities, such as religious exemptions, language rights, affirmative action, special representation and federalism.

This debate, between those who argue for general measures that apply to members of all groups equally and those who argue for particular measures that apply only to members of some groups is of particular political and moral urgency for liberals. The presence of group conflict in many countries that have undergone a transition to democracy, as well as, the frustration expressed by some minorities about the failure of established democracies to address their claims makes this debate politically urgent for liberals. The allegation made by both detractors and advocates of group rights that liberalism’s commitment to the individual as the basic moral unit of society precludes it from assigning rights to minority groups, irrespective of the political desirability of doing so, makes this debate of particular moral urgency for liberals.
This dissertation contributes to the debate about multiculturalism within liberal theory. I develop a political liberal approach to assigning rights to cultural groups as an alternative to the multicultural liberal approach, on the one hand, and egalitarian liberal approach, on the other. A political liberal approach is less sympathetic to group based cultural claims than some multiculturalist liberal celebrations of it, and is more sympathetic than some egalitarian liberal dismissals of it. For the political liberal, the rejection of group rights in some cases and its endorsement in others need not stem from the relative power of the majority or minority to hold up the political process, but stems from what treating persons as equals (whether they be members of the majority or minority groups) require in a political community. A political liberal approach strengthens both liberalism and multiculturalism by providing a basis for distinguishing reasonable from unreasonable claims. It can also lead to a less pessimistic view about the prospects for resolving group conflict by distinguishing the role of reasonable differences over how to treat others as equals, from that of hate and greed in aggravating group conflict.

*The multicultural liberal.* Multicultural liberals argue that liberalism can be made compatible with multiculturalism. They do this by seeking to develop a role for culture in an individual’s life. Whatever the role, personal end, comprehensive doctrine, context of choice, menu of options, or simply a resource, multicultural liberals argue that members of minority cultural communities often have unequal access to their particular culture. They expend more resources to maintain their culture—religion, ethnicity or

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2 Not all multiculturalists argue that it is compatible with liberalism. Nonliberal multiculturalists argue that liberalism is incapable of addressing group-based claims. The non-liberal multiculturalists believe that liberalism, as a theory that takes the individual as the fundamental moral unit of society, is in principle (and thus in practice) antagonistic to all group-based attachments and differences. They argue that an individuals’ membership of a cultural community is the most important basis for organizing the terms of social and economic cooperation. Rather than assign the same universal rights to all persons, a person’s membership in a community should be the basis for assigning group-differentiated rights. For these non-liberal multiculturalists the cultural community deserves as much or, even more moral priority than the individual. Justifying group rights in terms of ensuring individual equality is unnecessary because individuals are not the primary moral unit of a political community. Non-liberal multiculturalists see no common ground between liberalism, which targets the individual to assign rights, and multiculturalism, which targets the cultural group. Their approach to recognizing the claims of a cultural community is, at best, indifferent to and, at worst, hostile to liberalism. See Tully (1995) and Young (1995) for the non-liberal version of this argument.
nation - than members of the majority. This invariably leads to inequality. Multicultural liberals thus believe that the liberal state ought to be concerned about an individuals' membership in a cultural community precisely because individuals are. Multicultural liberals argue that it is precisely because liberals are committed to individual equality that they should support special rights for members of minority cultural communities to help maintain their culture. I develop the political liberal approach by arguing that multicultural liberals overstate the liberal failure to accommodate group based claims, exaggerate the role of culture in a person’s life, and ignore the invented nature of cultural identities.

First, multicultural liberals overstate the liberal failure to accommodate group based claims. Liberals oppose group specific justifications, not group specific measures. There are several justifications for group specific measures that are matters of general justice such as addressing economic inequality, preventing discrimination and rectifying past-injustice. The validity of these measures does not rest on the cultural nature of a group.

Second, multicultural liberals exaggerate the role of culture in a person’s life. Confusing culture with religion, multicultural liberals assign to culture the greater moral weight liberals traditionally reserve for religion. This leads them to seek constitutional protections for cultural practices, that political liberals only grant to religious ones. Multicultural liberals fail to consider a person’s simultaneous membership in many communities. For example, a Black Muslim, is both a member of the Black community in the United States and a member of the community of Muslims. A Tamil Christian is both a member of the Tamil community and community of Christians. A Catholic Italian-American from Sicily belongs to three communities simultaneously - the Italian-American, the Sicilian and the Catholic. The multicultural liberal also ignores the extent to which many members of a minority cultural community share social communities, such as class, profession, neighborhood and association, with non-members, often from the majority community.

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3 This position is closely associated with Will Kymlicka(1989).
4 The point here is not that all cultural communities are equally important to a person, but that a person does have less and more active forms of membership in communities.
Thus political liberals permit, but do not require, the state to assign special mechanisms that enable cultural groups to secure their “cultural” interests through the political process. Liberal rationales – resolving collective action problems and ensuring freedom of association – can justify measures to enable members of a cultural community to secure their own culture, themselves. In this way, liberals can justify support for members of minority religious, ethnic or national groups. This is similar to the way the state supports mechanisms for many other social groups, such as single parents, workers, farmers, and small business owners to secure their socio-economic interests.

Third multiculturalist liberals ignore the invented nature of cultural communities and the challenge this poses to defining group membership and cultural characteristics. Cultural communities are the product of political struggles among members as well as between members and nonmembers. And membership in these groups, as well as their characteristics, are not fixed but fluid. Groups form, re-form, change and even disappear altogether. Even when there is no dispute over who a member is, there can be considerable dispute among members about what their culture is. What some members view as an authentic, vital or central element of their culture, others may not. Political liberals are thus reluctant to argue that any particular aspect of a culture is required to ensure the continuity of a cultural community.

This leads political liberals not to endorse a right to maintain the culture of a group, unlike multiculturalist liberals who do. Political liberals argue that such a right mistakenly presupposes that group membership and character is uncontested, and has the potential to violate liberal neutrality by providing state support for one particular interpretation of a culture over another. However, political liberals support the adjustment of a cultural community to sudden changes in social and economic circumstances. Unlike multiculturalist liberals, they do not require that adjustment ought to lead to the maintenance of the cultural community.

The egalitarian liberal. Egalitarian liberals argue that liberalism is already compatible with multiculturalism. They argue that a conception of citizenship where

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5 The egalitarian liberal position on cultural rights is most forthrightly defended by Brian Barry, *Culture and Equality*, Harvard University Press, Cambridge, 2001. Unfortunately, his argument suffers a little from
there is only one status for all citizens and where every citizen enjoys the same legal and political rights is all that is required to accommodate cultural diversity. The egalitarian conception of a just liberal order includes support for a political order where the basic freedoms – freedom of expression, freedom of conscience, freedom of association and other political liberties – are upheld, and endorse a society where social and political opportunities are not limited by social circumstances and birth. Egalitarians liberals are also concerned that those with less income and wealth will, over time, get even less. They argue that not only birth and social circumstances, but also other morally irrelevant factors such as natural talents, and access to income and wealth should not affect a person’s life chances. They thus support political measures that rectify economic inequality. While liberal egalitarians differ about what terms of economic and social cooperation are both morally desirable and practically feasible, they concur that any such terms must address the question of how class inequality in a liberal society affects individuals’ life chances and their ability to enjoy their civil and political liberties. For liberal egalitarians the reasonable claims of cultural groups will be addressed by a political order that recognizes the basic liberties and addresses the economic inequalities. They view culture either as a resource that is fungible with income and wealth or as an expensive taste that ought not to be subsidized.

I develop the political liberal approach by arguing that egalitarian liberals overstate the liberal tension with group based claims, disregard the role of culture in a person’s life, and exaggerate the propensity of group based claims to aggravate conflict.

First, egalitarian liberals overstate the liberal tension with group specific policies. Liberals oppose group specific justifications, not group specific measures. There are several justifications for group specific measures that are matters cf general justice such as addressing economic inequality, preventing discrimination and rectifying past-

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its (consciously) polemical tone. This leads Barry to take the weight of some some claims of minority gorups, particularly religious ones, less seriously than his own commitment to liberalism ought to have led him to.

6 John Rawls, *A Theory of Justice*, Harvard University Press, 1971, provides the classic statement of the liberal egalitarian position. He argues that all persons should enjoy equal civil and political rights, and fair equality of opportunity. He also argues that the terms of economic and social cooperation chosen by a just political community should be that which improves the position of the least well-off in comparison with their position in any alternative. The political liberal position I develop draws on Rawls and is thus compatible with his egalitarian liberalism.
injustice. Here groups can be targetted to redress economic inequality, counter discrimination and rectify past injustice. Group membership here is simply a proxy for a social disadvantage. For liberals, the cultural nature of the disadvantaged group should not detract from the validity of the claim.

Second egalitarian liberals diminish the role of culture in a person’s life. Confusing religion with culture, egalitarian liberals assign to religion the status of an all purpose good or a reasonable interest that liberals traditionally assign to income and wealth. This distinction has important institutional implications in assigning rights. While egalitarian liberals only permit, but do not require that the state grant exemptions for religious practices that violate uniform rules, political liberals require that the state do so. Egalitarian liberals also fail to make a distinction between “ethnic” and “national” groups. The former are groups whose members live, work and socialize primarily with members of other cultural groups. The latter are encompassing groups whose members live, work and socialize primarily with members of their own cultural groups. The social weight (not the moral weight) of cultural membership is greater for members of national groups than for members of ethnic groups. Egalitarian liberals only permit, but do not require, the state to support mechanisms that enable cultural groups to adjust to new social and economic circumstances, when their membership is encompassing. However, political liberals require that the state support an encompassing cultural group to adjust, in the same way that the state ought to support the worker-residents in a factory town to adjust to new social and economic circumstances if the factory becomes unprofitable.

Third egalitarian liberals exaggerate the propensity of group based claims to create social disunity and aggravate conflict. Egalitarian liberals argue that multicultural claims lead to group specific measures, pitting members of usually disadvantaged minority groups against disadvantaged members of the majority. They argue that by creating disunity among those who are worse off, the politics of multiculturalism is inherently in tension with the politics of redistribution. Moreover as groups ratchet up their claims, the politics of assigning rights to groups can lead to group conflict. Political liberals argue that whether or not multicultural policies are in tension with redistributive ones depends on the way these policies are justified and defended and not simply derived from their group specific nature. Group specific measures that address the reasonable
interests of minority cultural groups can complement the politics of redistribution by demonstrating to minorities that their specific concerns are not ignored by a broader social mobilization. Where social disunity arises from disregarding the reasonable concerns of minorities, groups specific measures can actually mitigate group conflict.

While I develop the political liberal approach as a response to two representative liberal positions of group based claims - that of the egalitarian liberal who believes that cultural claims are misguided attempts at economic redistribution and that of the multicultural liberal who invariably celebrates the political claims of cultural groups - all egalitarian liberals and multiculturalist liberals do not share these positions. There are liberal egalitarians who consider themselves political liberals, and there are multicultural liberals who consider themselves political liberals. There are also egalitarian liberals who may consider themselves multicultural liberals. My task in developing a political liberal position is not to demonstrate that all egalitarian liberals misguidedly dismiss the disadvantages of minority cultural groups, but to argue that those who do ought not to. Similarly, my task in developing a political liberal position is not to demonstrate that all multicultural liberals misguidedly celebrate group-based claims even when they are politically undesirable and ignore the burdens these claims impose on weaker members and non-members, but to argue that those who do ought not to.

Rather than dismiss group-based claims made by cultural groups, some egalitarian liberals simply have a presumption against those claims. This does not stem from opposition to cultural groups but from a concern about the costs of regulation and the possibility that group based claims may lead to conflict. Similarly, rather than celebrate the group-based claims of cultural groups, some multicultural liberals simply have a presumption in favor of the claims of minority cultural groups. This stems from a concern that minority cultural groups have been historically excluded from enjoying the benefits of full citizenship and have suffered discrimination in most societies (including liberal ones). The liberals, whether egalitarian or multicultural, are difficult to distinguish from political liberals.

*Political Liberalism and Group Conflict.* There is a temptation in group conflicts to view the rejection of group rights as majoritarian prejudice in the guise of egalitarian
liberalism, and to view the advocacy of group rights as an attempt by a minority to grab more from the state in the guise of multicultural liberalism. Political liberals resist this temptation and take seriously the moral reasons liberal members of the minority and the majority present for and against group rights. These positions need not be viewed either as inegalitarian or intolerant, but as a result of different perspectives liberal members of the minority and the majority, committed to treating others as equals, bring to bear on complex political moral questions about when and how to address the political claims made by minority cultural groups. Often, these positions are simply indistinguishable from the general presumption of the multicultural liberal and egalitarian liberal for and against group rights, respectively.

The study of group conflict has been dominated by variations on a single explanation: group conflict is caused by hatred (deep differences over cultural identity) or greed (intense competition over material resources). Where the hatred comes from – myth, ancient history, recent acts of violence or political indoctrination - is less relevant than that it exists and manifests itself in group hostility. Similarly, where greed comes from - individual rationality, social solidarity or irrational passion - is less important than that it ultimately leads to group conflict over resources. This explanation is empirically and morally limiting. Empirically, it ignores how reasonable differences over how to treat members of other groups as equal citizens can aggravate group conflict. Morally, it weakens support for a just solution by assuming that group conflict is only caused by the unreasonable refusal to treat others as equal citizens. This leads to a more pessimistic view about the political prospects for a just solution. A normative discussion about institutional choices that address the claims of minority groups can contribute to resolving group conflict. Evaluating the justice of group claims in a liberal polity is complex and complicated. While these claims can be evaluated morally, the possible range of reasonable disagreement, i.e., where people who believe in individual equality can reasonably disagree, is still significant.

There are three main sources of reasonable disagreement – moral pluralism, situational complexity and social pluralism. Moral pluralism, i.e., the diversity of

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7 These categories are broadly derived from the discussion on the burdens of judgment in Rawls (1993), pp. 56-57. The main point is that “the account of these burdens must be such that it is fully compatible with,
comprehensive moral doctrines in a political community is the primary source of reasonable disagreement in a political community. Unlike other sources of reasonable disagreement there is no expectation that, over time, the exercise of reason or more information will resolve moral conflict. Religious conflict is the classic example of moral conflict. The challenge of moral conflict to political consensus is the primary challenge faced by political philosophers designing political institutions. Political liberalism – the basis of the arguments in this dissertation - is the liberal response to group conflict caused by reasonable disagreement due to moral pluralism.

The second source of disagreement results from any inquiry that seeks to specify, analyze and assess complex situations. While these complex situations are primarily found in social inquiry, they are not limited to it. The evidence that bears on a case is conflicting, and hard to assess and evaluate. There may be agreements about the criteria of assessment, but disagreement about their relative weight. And where information is indeterminate or vague, interpretations between reasonable people can differ. Persons can share the same moral doctrines and value systems, but differ on interpreting and evaluating evidence and information in complex situations.

It is the third source of reasonable disagreement – social pluralism - that is the focus of the discussion of group conflict, here. We may share moral doctrines – as Christians or communists or liberals or utilitarians - but differ in our social origin – as Blacks or Whites or Tamils or Sinhalese, or workers or businessmen, or city dwellers or farmers. This difference in social experience can be an important source of reasonable disagreement. Rawls describes it as follows:

To some extent (how great we cannot tell) the way we assess evidence and weigh moral and political values is shaped by our total experience, our whole our whole course of life up to now; and our total experiences must always differ. Thus in a modern society with its numerous office and positions, its various divisions of labor, its many social groups and their ethnic variety, citizens' total experiences are disparate enough for their judgments to diverge, at

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9 Apart from a brief discussion in Chapter III, this thesis accepts (and does not directly address) this source of reasonable disagreement.
10 This challenge is not limited to the social sciences. There are areas of the natural sciences – ranging from astrophysics and quantum electrodynamics to meteorology that face disagreements of this sort.
least to some degree, on many if not most cases of any significant complexity.\textsuperscript{11}

The experience of being a member of a particular social group (whether religious, ethnic or national) can affect the burdens of judgment of a reasonable person. This can lead to group conflict because of reasonable disagreement over institutional choices in a political community.\textsuperscript{12} Political liberals can share political moral values but differ in their social origin. This can lead to reasonable disagreement among liberals from different social groups. Reasonable differences alone will not cause group conflict. However, where some members of groups deny the rights of others to exist as equals, these reasonable differences lead to an additional obstacle to a just solution. Identifying reasonable differences among liberals from different social groups can contribute practically to designing political institutions that can lead to a just and stable solution to group conflict.

I illustrate this through two representative cases of group conflict over minority political claims – the Tamil claim for national self-determination in Sri Lanka and the Black claim for greater political representation in the United States. Understanding the sources of reasonable disagreement in a conflict can help mobilize support to resolve it. By looking at reasonable differences among Tamil liberals and Sinhala liberals over Tamil claims of national self-determination in Sri Lanka, and Black liberals and White liberals over Black claims of political representation in the United States, I show how distinguishing reasonable differences from unreasonable ones can contribute to the design of just institutions that resolve group conflict.

\textit{An Overview of the Chapters.} \hspace{1cm} \textit{Chapter II - “Can Liberals Assign Rights to Ethnic Groups?”} - argues that assigning rights to groups, in general, and ethnic groups, in particular, is compatible with liberalism. Liberal supporters of cultural rights typically assume assigning rights to ethnic groups is compatible with liberalism or provide an inadequate explanation of how it is. This has led to a debate where liberal supporters and liberal critics of ethnic group rights repeatedly question each other’s moral commitment

\textsuperscript{11} Rawls, 1993, pp. 56-57.
\textsuperscript{12} The main point is that “the account of these burdens must be such that it is fully compatible with, and does not impugn, the reasonableness of those who disagree.” Rawls, 1993, p.55.
to individual equality. I argue this misconstrues the differences between them. Rather than differing in their commitment to individual equality, liberal supporters and liberal critics of group rights differ in their empirical assessment of whether assigning rights to ethnic groups instigates conflict. Apart from libertarians, who are dogmatically opposed to the use of group classifications, altogether, other liberal objections to assigning rights to ethnic groups ultimately converge on the empirical claim that doing so instigates ethnic conflict.

A political liberal rationale for group rights views groups as a descriptive category that facilitates the fair distribution of burdens and benefits to citizens in a political community, not as a moral category that justifies rights by itself. I argue that whether assigning rights to ethnic groups leads to conflict is an empirical claim whose validity varies with the group and its particular circumstances, not a political moral claim that leads to the rejection of group rights under all circumstances. Political liberals can assign rights to ethnic groups provided that: group membership is an effective proxy, either for a social disadvantage that the state wants to remedy, or for a reasonable interest that a group wishes to secure, and doing so does not unfairly burden non-members and lead to political instability.

Chapter III - “Targeting Groups and Securing Culture” - examines specific liberal rationales for assigning rights to culturally distinct groups. First political liberals target members of cultural groups to ensure socio-economic equality, rectify past injustice and counter discrimination. While these measures use membership in a cultural community as a proxy for socio-economic disadvantage, they do not directly secure culture. Second political liberals support measures that enable groups to secure their culture, themselves. These measures, based on freedom of association, help cultural minorities resolve collective action problems. While these measures directly secure the culture of a group, the cost is borne entirely by members. Third political liberals support a minority culture as a means of promoting cultural diversity. They do so on the basis that a more complex common culture promotes individual well-being for everyone. While the cost of promoting a particular culture is borne by non-members, the benefits of a complex common culture also accrue to them. Addressing cultural claims that go beyond this entails subsidizing expensive culture because the cost of maintaining it leads to socio-
economic inequality for members. I examine the conditions under which liberals can justify such subsidies in the next two chapters.

Chapter IV - "Religion, Equality and Cultural Rights" - describes the political liberal approach to religious toleration and its implications for cultural rights. I outline the liberal normative rationale for religious freedom, persuade liberals to exempt religious practices from uniform rules, and dissuade them from subsidizing expensive religious practices. I argue that political liberals grant religion moral priority in a person's lives. This moral priority is based on the recognition of religion as a non-negotiable comprehensive moral doctrine. Political liberals do not grant culture the same kind of moral priority. Rather they treat culture as a shared set of social practices and historical traditions. This moral priority for religion leads political liberals to support exemptions for religious practices from uniform rules when they unfairly burden believers. However, political liberals reject the radical egalitarian argument for subsidizing religion because of practical moral hazard problems and the unfair burden granting such subsidies can impose on non-believers.

When the cultural practices of a group are so inextricably linked to their religious beliefs that it is difficult, if not impossible, to distinguish culture from morality, liberals recognize and support exemptions from uniform rules and regulations for these practices. They do so as a commitment to religious freedom, not simply because it is a cultural right. Liberalism can accommodate the claims of strictly religious and culturally insular groups in this way.

Finally, recognizing these religious exemptions does not provide an incentive to cultural groups to make political claims on the basis that their culture is a non-negotiable moral commitment. Persons who view their culture in this way are, at least, free to pursue their cultural commitments through the basic liberties and, at most, eligible for exemptions from uniform rules and regulations. These are not the kind of political measures that most cultural groups seek from the liberal state.

Chapter V - "Culture, Autonomy and Adjustment" - develops a political liberal approach to subsidizing expensive culture. I argue that while culture is an important social context of choice, it is only one of many. Other social contexts include the firm, neighborhood and family. Most persons adjust to social and economic changes,
themselves, by relying on some social contexts more than on others. For the state to maintain a person's multiple social contexts - whether family, work or associational - is either unnecessary or impracticable. All they require to maintain their social contexts is access to a fair bundle of primary goods, such as the basic liberties, and income and wealth.

However, this is not possible if all their contexts of choice are threatened, simultaneously. This usually happens to persons who live in encompassing contexts of choice where family, work and associational life are all contained within the same framework. Encompassing contexts can be socio-economic - a factory town and an industrial district - or they can be cultural - a language nation and a small aboriginal community. Persons whose encompassing context is threatened must then rely on state subsidies to adjust to new social and economic circumstances. However, the liberal state need not help them maintain their social contexts. This is also true of cultural contexts. For encompassing cultural contexts such as a language nation and a tribal community, state subsidies are justified as temporary measures to face unforeseen external circumstances, not as permanent ones to help maintain whatever cultural context a person chooses.

Adjusting a person's encompassing cultural context must clearly begin at its boundaries, but liberals do not believe it must end there. Adjustment can lead to the strengthening of a cultural community, its division into several cultural communities, or even its dissolution. Liberals may lament the loss when a particular community ceases to exist, but they do not require that adjustment of a cultural context lead to its maintenance.

Chapter VI - "Federalism in Sri Lanka" - develops federalism as a political solution to ethnic conflict in Sri Lanka between majority Sinhalese and minority Tamils. I defend federalism as a stable political consensus between Tamil liberals and Sinhala liberals, not simply as an unstable political compromise between Sinhalese who prefer a unitary state and Tamils who prefer to secede. The strategy of this political liberal defense is to reinterpret an ethnic conflict between Tamils and Sinhalese as a political conflict between liberals and nationalists.

It is hard to distinguish liberals from nationalists in a situation of ethnic conflict. Individuals may share political moral values but choose different political arrangements.
Similarly, individuals may differ in their political moral values, but choose similar political arrangements. In Sri Lanka, Sinhala liberals view the unitary state as a means of instituting political equality, while Sinhala nationalists view it as a means of ensuring Sinhala domination. Tamil liberals view secession as a means to strengthen Tamil culture, while Tamil nationalists view it as a means of Tamil domination. The Sinhala liberal and Tamil liberal need not be political opponents who support different political arrangements, but are potential political allies who share the same political principles. For the Sinhala liberal, acceding to federalism is not a compromise of liberal principles with Tamil nationalism when he rejects group hostility towards Tamils within a unitary Sri Lanka. Similarly, for the Tamil liberal federalism is not a compromise of liberal principles with Sinhala nationalism when he rejects an illiberal Tamil state.

Chapter VII - “Special Representation in the United States” - develops a political liberal strategy for increasing Black political representation in the United States House of Representatives. I advocate special measures to address inadequate Black political representation in congress. The argument for special measures is based on the claim that the main disadvantages Black candidates suffer are due to racial not racist polarization. Racist polarization stems from White refusal to vote for Blacks due to hostility and prejudice. Racial polarization reflects White use of Blackness as a proxy for a candidates interests and ideology under conditions of informational paucity.

It is hard to distinguish White liberal support for standard territorial districts as a means of ensuring political equality from White supremacist support for these districts as a means of ensuring White domination. Similarly it is hard to separate Black liberal support for race conscious districts as a means of addressing the electoral inequality faced by Blacks in political representation and Black separatist support for race conscious districts on the basis that only Blacks can represent Black interests. I distinguish the White liberal from the White supremacist and the Black liberal from the Black separatist by distinguishing racist from racial polarization.

White supremacists argue that there is neither racial nor racist polarization. They trace Black electoral inequality to Black racial inferiority and argue that Whites win because they are either better candidates or better at representing everyone’s interests, including Blacks. Thus White supremacists support race neutral territorial districts
because they see no unfair disadvantage suffered by Blacks. When White liberals who deny the presence of racist polarization acknowledge the presence of racial polarization, they support alternative electoral mechanisms to race neutral territorial districts to rectify Black electoral inequality provided they do not unfairly disadvantage Whites. Black separatists reject the distinction between racial and racist polarization. They trace Black electoral inequality to racist polarization and argue that only Blacks can represent Black interests. However, while Black liberals argue that racial polarization is usually present, they do not argue that racist polarization always is. This leads them to support less restrictive means of rectifying Black electoral inequality that encourage White voters to vote for Black candidates.

Chapter VIII concludes by responding to two objections to the political liberal approach to cultural rights developed in this dissertation.
Chapter II.
Can Liberals Assign Rights to Ethnic Groups?

Before liberals can assign cultural rights, they need to show that assigning rights to groups, in general, and ethnic groups, in particular, is compatible with liberalism. However, liberal supporters of cultural rights typically assume assigning rights to ethnic groups is compatible with liberalism or provide an inadequate explanation of how it is.\textsuperscript{13} This has led to a debate where liberal supporters and liberal critics of ethnic group rights repeatedly question each other’s moral commitment to individual equality.\textsuperscript{14} I argue this misconstrues the differences between them. Rather than differing in their commitment to individual equality, liberal supporters and liberal critics of group rights differ in their empirical assessment of whether assigning rights to ethnic groups instigates conflict. Apart from libertarians, who are dogmatically opposed to the use of group classifications, altogether, other liberal objections to assigning rights to ethnic groups ultimately converge on the empirical claim that doing so instigates ethnic conflict.\textsuperscript{15}

I argue that whether assigning rights to ethnic groups leads to conflict is an empirical claim whose validity varies with the group and its particular circumstances, not a political moral claim that leads to the rejection of group rights under all circumstances. Political liberals can assign rights to ethnic groups provided that: group membership is an effective proxy, either for a social disadvantage that the state wants to remedy, or for a

\textsuperscript{13} Kymlicka’s (1989) discussion of cultural rights and Levy’s (1997) classification of cultural rights are instances of the former. Kymlicka’s discussion of cultural rights in “Individual rights and Collective Rights,” Chapter III (1995) and “Individual and Community Rights” (1994) are instances of the latter. Kymlicka’s implicit rationale for not addressing the question of assigning rights more generally to ethnic groups is that those rights are temporary efforts to redress a systemic disadvantage and context based, unlike cultural rights which are permanent claims made by an ethnic community (1995: pp. 141-142). The liberal justification of assigning rights to ethnic groups to rectify social disadvantages or secure interests that may not be directly cultural, however, will also affect the liberal justification of assigning cultural rights.

\textsuperscript{14} The exchange between Kukathas (February 1992, November 1992) and Kymlicak (February 1992) is representative of the form of this debate.

\textsuperscript{15} In this chapter I use the term ethnicity to mean membership in a racial, linguistic, religious or national group. For the sake of brevity I use this looser definition than the one I use in subsequent chapters. However, this definition does not affect the nature of the argument I make in this chapter. Membership in one of these groups is often derived from birth and need not be active. Moreover, a person can be a member of many ethnic groups simultaneously, such as a African-American Muslim, a French Jew or a Tamil Christian (Chandra, 1999, p.3).
reasonable interest that a group wishes to secure, and doing so does not unfairly burden non-members and lead to political instability.\textsuperscript{16}

I stake out this political liberal defense of assigning rights to ethnic groups by examining different liberal objections to it. The first objection is that any assignation of group rights is inconsistent with liberalism's moral commitment to the individual (II). This objection, usually associated with libertarians, ignores the possibility that liberals can assign rights to groups on the basis of their impact on the individuals that comprise them rather than on the basis that groups are morally superior to individuals. This libertarian objection precludes the development of most kinds of social policies in a democracy or ignores considerations of distributive justice in implementing them. I show how most liberals do not oppose the assigning of rights to groups, such as single parents, when they use group membership as a proxy for a social disadvantage or a reasonable interest.

The second objection is that ethnic membership is a poor proxy for social disadvantages or for a reasonable interest (III). It is argued that membership in ethnic groups is a poor proxy because all members do not share the same disadvantage or desire the same interest, or because persons are socially and morally attached to their ethnic group. I respond that in assigning rights liberals do not seek to capture all aspects of a person's membership in a group, but only those that are relevant to remedying inequality. Whether an ethnic group, like any other group, is a good proxy for a social disadvantage or for a reasonable interest is ultimately an empirical question that depends on the particular group.

The third objection is that because assigning rights to ethnic groups leads to stereotyping, liberals ought to reject rights for ethnic groups (IV). I respond that rejecting rights because of stereotyping unfairly gives moral weight to racist attitudes in society. Rather than indicating why ethnic groups ought not to be assigned rights, such stereotyping may be an additional reason for assigning them.

The fourth objection is that even if stereotyping can be ignored or overcome, assigning rights to ethnic groups induces resentment in others (V). I respond that

\textsuperscript{16} Reasonable interests are interests that any subgroup I society may have that are politically reasonable. These interests may vary from leisure to a clean environment.
resentment on the part of non-members towards groups assigned rights is not, by itself, a moral reason to withhold such rights.

The final objection is that the ethnic rivalry over assigning rights to ethnic groups and the resentment induced when some groups are assigned rights and others are not, invariably leads to political conflict and undermines political stability (VI). Therefore political liberals ought not to politicize ethnicity by seeking rights for ethnic groups. I argue that this is an empirical claim that varies with the group concerned, not a political moral one that leads to the rejection of rights for ethnic groups. Liberal advocates of ethnic group rights need to show, not only that ensuring political equality for members can require assigning rights to ethnic groups, but also that these rights do not unfairly burden non-members and undermine political stability (VII).

II. The Individual versus the Group

There are many types of groups. Blacks, blondes, Jews, tall persons, Tamils, the least well-off, women and communists are some examples. It is also possible to be a member of many groups, simultaneously - a tall blonde Jewish woman communist who is among the least well-off. Liberals do not grant special moral status to members of one of these groups over another; neither do they grant special moral status to the group over the individual. They do not believe that say being black entitles you to greater or lesser recognition as a citizen than being tall. Neither do liberals believe that the group of Blacks or tall people, simply by being a group, has greater moral status than the single Black person or the single tall person. All individuals irrespective of the group category they belong to are morally recognized as equal citizens in a liberal polity.

Thus many liberals are wary of group rights because they are concerned that assigning rights to groups requires recognizing groups as moral entities.\(^{17}\) This then sets up a political moral tension between the individual and the group. Morally liberals only recognize individuals, as the basic units of a society, not groups. They reject group rights because instituting rights for groups alongside rights for individuals weakens the moral status of individuals. For a group to have moral status it must have an existence and

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\(^{17}\) This wariness is increased by arguments for group rights that are based on granting groups moral status. For an example see Vernon Van Dyke (1977; 1982).
claims independent of the individuals who comprise it. Granting groups moral status that precedes or even parallels that of individuals can lead to illiberal consequences. If a group indeed has rights independent of individuals, then the state may be compelled to limit the individual freedoms of a person to the extent they conflict with the rights of a group. A group can require an individual member to make sacrifices for it, irrespective of her own allegiance to or desire to continue being a member of the group.

An example of a political order where groups had an independent moral status is the millet system under Ottoman rule.\textsuperscript{18} Under the millet system, while Islam was the dominant religion, Jews and Christians enjoyed autonomy to run their own affairs. Group autonomy, albeit considerable, was controlled by religious authorities. The groups required allegiance and obedience from members. Women and other subgroups had a subordinate status within groups. Religious authorities who, with the help of the Ottoman state, precluded members from questioning or leaving the groups ensured the existence of groups.\textsuperscript{19}

If groups have a moral status, and thus a moral existence independent of the members who make up the group, a state may be required to ensure the existence of the group whatever the desire of members. Even if all members of a group wish to dissolve it, they may be unable to do so. The group that is recognized as a moral entity by the liberal state can have a claim over its members to ensure its existence that the state then must enforce. Granting moral status to groups alongside individuals can lead to an irresolvable tension between the two.\textsuperscript{20} This is a political moral tension that cannot be resolved through institutional design or political accommodation. At best, it can lead to a theoretical compromise between the affirmation of group concerns and the recognition of

\textsuperscript{18} Kymlicka (1995: pp. 156-158) refers to it critically as an example of illiberal pluralism and Walzer (1997) refers to it approvingly as a form of communitarian tolerance.

\textsuperscript{19} Heresy and apostasy were crimes.

\textsuperscript{20} I do not mean to imply here that there will always be a practical tension between assigning a special moral status to groups and individual freedom, only that there will always be a principled one. It may be possible for the liberal state to grant moral status to a group and then do little or nothing about it in practice. Many societies may grant moral recognition to a particular group, say, the Anglican Church in England, in a way that does not directly impinge on members and non-members freedom of worship. This is also true of Buddhism in Sri Lanka, where Buddhism has a special status. Despite most Sinhalese being Buddhist and most Tamils Hindu, there have been no complaints of violations of religious freedom by Hindus. Here state support and recognition of these entities exists apart from their direct impact on the lives of individuals.
individual rights. At worst, it can lead to a disregard for individual rights as they succumb to group pressures. Either resolution is illiberal.

However, granting rights to a group does not always require granting it moral status alongside individuals. Group rights can emerge from a concern for the well-being of individuals who comprise these groups. A liberal conception of group rights views rights granted or restrictions imposed on groups as ultimately stemming from the attempt to ensure individuals have an equal bundle of primary goods, such as the basic liberties, income and wealth, and fair equality of opportunity. Such rights for groups or restrictions on them need not reflect a special moral status for groups apart from the individual. Here group classifications are a proxy or an administrative convenience for ensuring a fair distribution of burdens and benefits to citizens in a political community.

Consider Rawls' discussion of the least well-off group in his theory of justice. He refers to this group in his Second Principle of Justice. Specifically he states "social and economic inequalities are to be arranged, so that they are both to the greatest benefit of the least advantaged, and attached and open to all under conditions of fair equality of opportunity." Some liberals suggest that Rawls betrays his commitment to liberalism by focusing on the social category of the least advantaged as a group rather than the least advantaged individual. They argue Rawls' use of a group category is not adequately fine-tuned to the diverse tastes, desires, handicaps, and particular histories of individuals in the way a liberal theory ought to be. For example, some persons who are not placed in the least well-off social category may in fact be more disadvantaged than the least well-off. They may have disadvantages, such as handicaps or unchosen expensive tastes, that are not adequately captured by a representative social category. Their ability to

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21 Rawls (1971) p. 302. I do not seek to defend Rawls' theory of justice, here. Rather I utilise his response to the objection that his theory abandons liberalism when he uses group categories, to defend the use of group categories within liberalism, more generally.

22 For example see Nozick, p. 190: "...we should question why individuals in the original position would choose a principle that focuses upon groups, rather than individuals. Won't application of the minimax principle lead each person in the original position to favor maximizing the position of the worst-off individual?" (emphasis in original)

23 "Rawls, on the other hand, assumes that the difference principle ties justice to a class, not as a matter of second-best practical accommodation to some deeper version of equality which is in principle more individualized, but because the choice in the original position, which defines what justice even at bottom is, would for practical reasons be framed in class terms from the start." (Dworkin, 1981, p. 341).

24 These criticisms are made by Dworkin (1981) and G. A. Cohen (1989; 1995) respectively.
transform a given bundle of primary goods into welfare may be less than others similarly situated.

While some of these concerns can be addressed within a Rawlsian framework - through compensation for persons who face particular disadvantages - Rawls is still vulnerable to the criticism that he uses representative social categories to determine and evaluate the burdens and benefits of citizens in a political community. Ultimately, Rawls concedes an element of arbitrariness in his theory to the extent that he uses general categories rather than individualized ones that take into consideration all dimensions of a person’s interests, tastes and histories. But it is a mistake to view his use of general group categories as a betrayal of his moral commitment to the individual as the basic unit of a liberal community.

Rawls’ use of the least well-off group rather than the least well-off individual does not reflect a weakening of his moral commitment to the individual as the basic unit of society. It reflects a practical concern for working out manageable criteria for evaluating the justice of social institutions. Such criteria will necessarily be general rather than particular. They will have to refer to social categories rather than particular individuals. Referring to the least well-off individual in these cases will only tell us something about a particular individual’s situation and nothing about the justice of the social institutions of the society in which she lives. For example, the least well-off individual in a society may be the millionaire who just fell off the mountain while on a rock climbing expedition or the chief executive of a company who just gambled away her millions. These idiosyncratic positions are not indicative of the justice of the social institutions in a particular polity.

That the distribution of burdens and benefits and the inequalities associated with social positions should favor the least well-off group is not an indication of the superior moral status of the least well-off as a group, rather than as an individual in society. The group category of the least well-off is a means for evaluating the justice of the terms of social and economic cooperation in a polity.

The least well-off or single parents or persons with an income below the poverty level are all group categories used by the state to distribute benefits and resources in a liberal polity. For political liberals, what is important is not whether a claim to additional
resources is derived from membership in a group, but whether the membership itself effectively predicts the additional burdens a person endures. In many cases there may be more individualised and thus accurate means of fitting the burden to be redressed with the group classification that is used. But the decision about whether or not to use a particular group classification as a basis to assign a right is not derived simply from its accuracy alone. It is also based on whether or not the classification is manageable, i.e., it does not lead to an undue loss of state efficiency nor undue restrictions on the privacy of persons, when the state has to monitor them to ensure an accurate fit between the burden to be redressed and the persons who receive benefits.

For example, a state scheme that provides the same economic subsidies for all single parents with the same number of children may not affect every single parent equally. Some single parents may have grandparents or friends who can help with childcare or informally support single parents in other ways. These single parents will be in a relatively advantageous position over others similarly situated. The category of single parent here does not adequately capture the specificity of the experiences and resources of different single parents. But there is no policy scheme that seeks to support single parents that can make such fine differentiation between different single parents without expending resources to intensely monitor families or violating their privacy to do so.

The state's use of the category of single parent here is not an attempt to grant moral status to the group of single parents over individual single parents. It is simply an administrative convenience that enables the state to distribute resources to those who face special burdens in raising children without the support of partners. Here, groups are a descriptive category for facilitating the just distribution of resources to citizens who face special burdens, not a moral category that justifies distribution by itself.

Political liberals ultimately view group categories for the purposes of assigning rights to persons as administrative conveniences that enable the state to ensure a fair distribution of the burdens and benefits of citizenship. They concede these group classifications may not always provide a perfect fit between the burden to be redressed and the target group. However, given the practical constraints of ensuring such a fit - the loss of efficiency of the state and the restrictions on the privacy of the individual, most
target groups will be imperfectly matched to redistributive policies. Political liberals do not see this as a reason to reject the use of group categories for assigning rights altogether. Rather they argue a degree of arbitrariness in using group categories is preferable to the alternative – ignoring inequalities altogether because of the practical cost of monitoring. The extent to which the target group fits the policy goal of the state will depend on particular judgments about each case, which includes among other things: the reasonableness of the policy itself, the nature of the group, and burdens imposed on those excluded. In a society where basic liberties are upheld and background conditions of justice prevail, imperfections in the fit between a redistributive policy and the target group need not impose any undue burden on particular persons.

To clarify the role of group rights in a liberal society, I will contrast them with the basic liberties in a liberal polity. The priority of the basic liberties in liberalism is derived from the political liberal recognition of the fact of moral pluralism. The fact of moral pluralism is based on the non-negotiability of comprehensive moral doctrines and the permanence of the disagreements they engender among politically reasonable persons. The basic liberties are fundamental rights that a person may always exercise. These rights do not depend on membership in any group and they may not be taken away by the state no matter the social and economic circumstances. The basic liberties are intrinsic to a liberal order, unlike group rights which are dependent on the particular social and economic circumstances of the group.

The rights assigned groups may change when group circumstances change and different groups may enjoy the same rights at different moments. The least well-off or single parents as a group in a society may be entitled to certain rights. These rights may include added protection from discrimination or the granting of state subsidies. Whatever the rights assigned to a group, they are not permanent. They are assigned only to the extent such rights are required to ensure members of a group are indeed treated as equals. In the event that social and economic circumstances change, these rights may no longer become necessary for ensuring justice in a liberal society.

25 Rawls (1993), Lecture VIII. "The Basic Liberties and Their Priority."
26 John Rawls (1993) and Joshua Cohen (1992). I address this in greater detail in Chapter III.
27 Though there may be provisions to restrict these liberties when there is a constitutional crisis, solely for the sake of preserving democratic institutions and the basic liberties (Rawls, 1993, p. 355).
Thus group rights are ultimately temporary and not central to the political institutions of a liberal society in the way the basic liberties are.\textsuperscript{28} This contrasts with the political liberal approach to the basic liberties such as freedom of association, conscience, and expression. Given the fact of social pluralism, however, group-specific burdens and benefits are bound to exist even in a just society.

In this section I argue that liberals need not grant groups moral status to assign them rights. Instead liberals can treat groups as administrative conveniences that facilitate the fair distribution of burdens and benefits to citizens in a political community. Next, I address the objection that, unlike single parents and the least well-off, ethnic groups are a poor proxy either for a social disadvantage or for a reasonable interest.

\textbf{III. Ethnicity is a Poor Proxy}

Many liberals willing to assign rights to groups, like single parents and the least well-off, are unwilling to assign rights to ethnic groups. They object that ethnic membership is a poorer proxy for members’ life chances than non-ethnic groups. First ethnic membership is a poor proxy because membership for some persons is nominal. They receive benefits without directly experiencing the disadvantages that justify those benefits, because their individual social position does not reflect the actual experience faced by a typical member of their ethnic group. Therefore, the ethnic category provides a poor description of the disadvantaged target group.\textsuperscript{29} Second ethnic membership is a poor proxy because it is significant in the private, social, and political life of a person. Ethnic groups are not simply administrative conveniences of the liberal state. These groups exist outside of or prior to the state.\textsuperscript{30} They play a critical role in the personal, political and social life of a person. Treating ethnic membership as if it were simply an administrative convenience fails to capture its complex role in a person’s life. I respond that this objection is true of any group category, not just ethnic ones. This either leads to

\textsuperscript{28} This not to deny that the groups, themselves, may continue to exist in society as social entities.
\textsuperscript{29} In the terminology of American constitutional law, the objection is that the ethnic group is “over-inclusive.”
\textsuperscript{30} See Partha Chatterjee (1993) for a postcolonial version, Vernon Van Dyke (1977; 1982) for a group-based version, and Owen Fiss (1976) for a sociological version of this critique of the administrative use of group membership.
the rejection of rights for all groups or the assigning of rights to ethnic groups, provided they are good proxies for a member’s life chances.

In some cases, ethnic categories like Blacks, Tamils or Jews may provide proxies for a person’s life-chances in a political community. Like the group categories of single parents or the least well-off, they can signal to the liberal state the additional burdens a member of this group may have to face. For example, most Tamils in Sri Lanka are monolingual speakers of Tamil. Since Sinhala is the official language and English - though not the official language is often used for official purposes - monolingual Tamil speakers face a special disadvantage in communicating with the state. Since most ethnic Tamils are also monolingual Tamil speakers, being a member of the ethnic category of Tamils in Sri Lanka is indicative of a particular linguistic disadvantage. Similarly, most Blacks in the United States endure the disadvantages associated with racial discrimination and the legacy of slavery. The effects of this disadvantage include poverty, poor educational and health facilities, and lack of job opportunities. Being a member of the ethnic category of Blacks in the United States is indicative of a particular socio-economic disadvantage.

To rectify the particular burden monolingual Tamil speakers or socio-economically disadvantaged Blacks face, the state can use membership in the respective ethnic group as a proxy for the person who faces the disadvantage. The Sri Lankan state may then distribute additional resources, such as subsidies to obtain translators, to all Tamils as a means of redressing their linguistic disadvantage. Similarly, the US state may decide to give preference to Blacks in education and job opportunities to redress their disadvantage based on racism and poverty. However, some liberals object that membership in ethnic categories is simply nominal for many persons. A nominal member does not face the disadvantages other members of the group endure. Upper middle class Colombo Tamils or upper middle class Blacks do not suffer the disadvantages associated with typical members of their respective ethnic categories.

Upper middle class Tamils who speak English and/or Sinhala do not face the same linguistic disadvantages monolingual Tamil speakers do. Many of them neither identify nor associate with other Tamils. They may only be nominal members of their ethnic group. Assigning them linguistic rights on the basis that they suffer the same
linguistic disadvantage as monolingual Tamil speakers is unfair. Similarly, most upper middle class Blacks live in predominantly middle class neighborhoods with good educational opportunities. They do not endure racism and poverty in the way Blacks who live in the inner-city or in the rural South of the United States do. Many of them neither identify with nor associate with other Blacks. As nominal members of their ethnic group, assigning them preferences in education and hiring on the basis that they face the same disadvantages as other Blacks is unfair.

Thus, liberal critics of group rights argue that the use of membership in an ethnic group provides a bad fit between the disadvantage to be redressed and the group targeted. Instead of resorting to membership in ethnic groups as a proxy, the state ought to ensure only those Tamils who cannot speak Sinhala - not all Tamils qua Tamils - receive state support. This may be done through a test or monitoring Tamils to ensure they really cannot speak it. Similarly, critics of the use of membership in the Black community as a proxy for disadvantage argue that poverty cannot be reduced to race, as there are poor Whites and there are wealthy Blacks. Disadvantage due to racism ought to be established in a more finely tuned way before the liberal state metes out compensation or special treatment. Examining the income of particular persons or their personal history can do this. By pointing to members who are atypical of their groups, liberal critics of group rights argue ethnic categories do not provide a good fit between the redistributive or social policy and the target group.

But this objection is true of any group category, not just ethnic ones. Group categories, such as single parents and those below the poverty line, provide better or worse fits than others. These groups also have atypical members who may have access to other resources through family and friends that enable them to face the additional burdens of being a single parent or poor, and thus who do not require state support. The ethnic nature of a group does not by itself indicate whether the group category provides a better or worse fit for redistributive policies than a group category that is not ethnic. Whether membership in an ethnic group is an adequate proxy for a person's particular disadvantage is ultimately an empirical question that needs be answered through an examination of the circumstance of a group. The same reasons that lead liberals to use the group categories of single parents and the least well-off - loss of state efficiency and
restrictions on individual freedom to due to monitoring – can also lead them to use ethnic categories such as Black and Tamil.

Consider an ethnic category such as Black. Assume membership in this group category provides a good index of the life chances of a person. These life chances can include possessing an adequate bundle of primary goods and having fair equality of opportunity. Clearly the group classification of Black, like any other group classification, will be an approximation. There will be some Blacks whose life chances will be better than non-Blacks. Within Blacks as a group there will be differential life-chances. But as we noted in the case of single parents, this is true of all group classifications. So what distinguishes the group category Black from single parent is not that it is a bad approximation, but that it is an approximation based on ethnicity. To the members of an ethnic group, whose life chances are effectively predicted by membership in it, this is an arbitrary distinction. If persons can receive resources from the state based on group characteristics - such as marital status, income and region of origin – then they should be entitled to do so on the basis of ethnicity, when it is a good approximation of a person’s life chances.

The objection to assigning ethnic groups rights on the basis that membership is nominal for some persons is simply a variation on the claim that group categories in general are inadequately fine-tuned to individual needs. This either leads to the rejection of rights for all group categories or the assigning of rights to ethnic groups provided they are good proxies for a member’s life chances.

Liberals also argue that ethnic membership is a poor proxy because it plays an important role in the private, social, and political life of a person. The liberal state offends members of an ethnic group when it uses membership as simply an administrative convenience because it means much more to them. Membership is relevant to many more aspects of a person’s life than simply a proxy for a person’s life chances. The critique holds that precisely because most persons do not treat ethnic membership as simply an administrative convenience, the liberal state also ought not to.

Again consider group membership for Tamils and Blacks. The role of their group membership for socio-economic redistribution is secondary at most. Their group
membership affects all aspects of their life - private, political, and social.\textsuperscript{31} Besides a person’s life-chances, narrowly defined, being a member of an ethnic category such as Black or Tamil affects the language they speak, the friends they make, the spouses they marry, the music they listen to, the jobs they have, and the neighborhoods they live in. To them it is not simply an administrative convenience. When the liberal state simplifies the complex reality of ethnic membership by treating it as an administrative convenience, this critique holds, it ignores the importance of such membership in a person’s life.\textsuperscript{32}

But this rejection of ethnic membership as an administrative convenience misconstrues the role the liberal state assigns to groups when it grants them rights. The liberal state does not seek to capture a complete and complex picture of ethnic membership in a person’s life. Nor do its policies seek to reflect the importance of ethnic membership to a person. On the contrary, the liberal state seeks to capture only a narrow and very limited aspect of the role of ethnic membership in a person’s life, i.e., its role as a proxy in predicting the life-chances of a person. The liberal state distinguishes the administrative role of a person’s ethnic membership in predicting access to a bundle of primary goods from other equally important, or even more important, roles it may have in a person’s life. The state may use membership in an ethnic group, such as Black, Jewish

\textsuperscript{31} "...it strikes me as odd (to reject) the idea that there are natural classes, that is groups that have an identity and existence wholly apart from the challenged statute and practice. There are natural classes, or social groups in American society and Blacks are such a group. Blacks are viewed as a group; they view themselves as a group; their identity is in large part determined by membership in the group; their social status is linked to the status of the group; and much of their action, institutional and personal, is based on these perspectives.” Fiss (1976, p. 148)

\textsuperscript{32} This objection is one example of the more general objection to attempts by the state to categorise and simplify social, natural and political reality for the sake of administrative ease:

"State simplifications by their very nature, have a particular character. Most obviously, they are observations of those aspects, and only those aspects, of social life that are of official interest. They are interested, utilitarian facts. They are also, of course, nearly always written or numerical facts recorded in documents. Third, they are typically static facts. Even when they appear dynamic, they are typically the result of multiple static observations through time. ...Finally, most stylized state facts are aggregate facts. Aggregate facts may be impersonal (for example, the density of transportation networks) or simply a collection of facts about individuals - for example, employment rates, literacy rates, residence patterns. For most purposes, state officials need to group citizens in a way that permits them to make collective assessment.

Facts that can be aggregated and presented as averages or distributions must forcibly be standardized facts. However unique the actual circumstances of the various individuals who make up the aggregate, it is their sameness or, more precisely, their differences along a standardized scale or continuum that are of interest.” Scott, 1995, pp. 228-230.

Curiously, this foucauldian wariness of the use of group categories converges on the libertarian opposition to their use. Thus, a libertarian critic of group rights like Kukathas (1997, p. 423) can cite Scott approvingly.
or Tamil, as an indication of social privileges or disadvantages in a political community. From the state’s point of view, they continue to be administrative conveniences, even though the members of these groups clearly experience their membership far more intensely, in socially and even morally salient ways.

It is possible then for liberals to assign rights to ethnic groups, such as Blacks, Tamils, and Jews, without needing to consider all aspects of group membership in a person’s life. The political morality of this use of group classifications in working out a just scheme of social and economic cooperation is relevantly parallel to the liberal state’s use of group categories such as the least well-off or single parents. When the liberal state uses these ethnic categories as administrative conveniences, the state is not seeking to capture all aspects of a person’s life with them. The use of ethnic categories as administrative conveniences is not vulnerable to the criticism that it fails to capture all aspects of ethnic membership, because that is precisely what political liberals argue an administrative convenience neither does nor seeks to do.

In this section I described two reasons why some liberals object to treating ethnic groups as administrative conveniences in order to assign them rights. The first was that some members did not share in the burden that justified the use of ethnic membership as an administrative convenience. The second objection was that ethnic membership played a greater private, political, and social role in a member’s life than an administrative convenience. I argued that the first objection was a variation of the claim that group categories were inadequately fine-tuned to individual needs. This either leads to the rejection of rights for all group categories or the assigning of rights to ethnic groups provided they are good proxies for a member’s life chances. I argued that the second objection misconstrued the political liberal motivation in using ethnic categories as administrative conveniences. Political liberals do not seek to capture all aspects of ethnic membership in a person’s life, only those aspects relevant to the distribution of primary goods in a liberal community.

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33 Here I draw on Rawls’ rationale for the use of the least well-off as a representative social position in formulating the difference principle:

"In any case we are to aggregate to some degree over the expectations of the worst off, and the figure selected on which to base these computations is to a certain extent ad hoc. Yet we are entitled at some point to plead practical considerations in formulating the difference principle. Sooner or later the capacity of philosophical or other arguments to make finer distinctions is bound to run out.” Rawls, 1971, p. 98.
IV. Assigning Rights to Ethnic Groups Leads to Stereotyping

Some liberals argue that ethnic groups should not be assigned rights even when the group disadvantage is clear, the remedy is appropriate, and the ethnic group is treated as only an administrative convenience. When ethnic groups are assigned rights, these liberals claim, non-members stereotype them. I respond that stereotyping of members when group rights are justified is not a political moral reason for rejecting them. At worst, it makes the rights assigned politically undesirable, and at best, it reinforces why those rights are morally required in the first place.

Liberal critics of group rights argue when group membership is used as a proxy for a particular aspect of a person, it leads to stereotyping because it ignores the diversity of persons within a group.\textsuperscript{34} To justify rights, the liberal state emphasizes a single aspect of the group – its disadvantage – to the exclusion of all others. Non-members, to whom the state needs to justify such ethnic group rights, focus on this particular dimension of group membership. They stereotype group members by identifying them with the social and economic disadvantage. Even if all members of a group are disadvantaged in one particular dimension, they have diverse talents, capabilities, tastes, and goals. This diversity, however, is easily lost sight of within the group category, of which the most immediate politically relevant aspect is the disadvantage. This can lead to all members being considered inferior to non-members in all dimensions, not just likely to be at a disadvantage in the one particular dimension that justifies assigning them rights.

Just as non-members define group members through the administrative convenience, members also define themselves through it. Members initially mobilise

\textsuperscript{34} "...... it is irrelevant whether a government's racial classifications are drawn by those who wish to oppress a race or by those who have a sincere desire to help those thought to be disadvantaged. ... Unquestionably, "[i]nvidious [racial] discrimination is an engine of oppression." It is also true that "[r]emedial" racial preferences may reflect "a desire to foster equality in society." But there can be no doubt that racial paternalism and its unintended consequences can be as poisonous and pernicious as any other form of discrimination. So-called "benign" discrimination teaches many that because of chronic and apparently immutable handicaps, minorities cannot compete with them without their patronizing indulgence. Inevitably, such programs engender attitudes of superiority or, alternately, provoke resentment among those who believe that they have been wronged by the government's use of race. These programs stamp minorities with a badge of inferiority and may cause them to develop dependencies or to adopt an attitude that they are "entitled" to preferences." Justice Clarence Thomas, Concurring Judgment in "Adarand Constructors Inc. v. Pena," (512 US 200, 1995).
politically to redress a social disadvantage. They emphasize a particular aspect of their social situation to justify their claims to non-members. The dimension of membership they emphasize, however, comes to dominate their political interaction with non-members. Though group members themselves have a more nuanced and complex view of the role of group membership in their lives, stereotyping by non-members affects members' sense of themselves and their own capabilities. The administrative convenience eventually becomes the group identity.

This dynamic is apparent in the tendency to blame group members when assigning them rights fails to alleviate their social disadvantage. Group members initially stake their claims on the basis that assigning rights would improve their socio-economic situation. This leads non-members to view any failure of these rights to do so as a sign that group members are incapable of improving their social situation. Non-members believe that members are not striving sufficiently to alleviate their situation. This is one step away from perceiving the group assigned rights as inherently inferior and not simply at a disadvantage due to particular social and economic circumstances. Non-members then discriminate against ethnic groups in society on the basis that members are indeed inferior.

Over time the ethnic group becomes permanently defined, by members and non-members, through the temporary condition of disadvantage that initially led to the assigning of rights. Because ethnic membership is derived from birth, the disadvantages associated with it can contribute to the conclusion that social disadvantage is a natural consequence of group membership rather than a social consequence of group circumstances.\textsuperscript{35} Non-members then believe that assigning rights and benefits to ethnic groups is a drain on social resources because they fail to change the social circumstances of members.

Liberal critics argue members of ethnic groups are also subject to stereotyping when assigning them rights improves their social circumstances. When these programs succeed, non-members tend to credit the programs rather than the group members themselves as the source of a groups' improvement. This can have a profound
psychological impact on group members. Their efforts are not given sufficient 
recognition by society. Even when their efforts receive recognition, they come to doubt 
their own capabilities. As beneficiaries of special programs, they feel they have not made 
it on their own steam, unlike non-members. This makes them vulnerable to the 
stereotype that they are less capable and therefore less deserving.\textsuperscript{36}

Political liberals respond that stereotyping does not result from assigning rights to 
groups but already exists in a society with ethnic divisions. The stereotyping by non-
members is a part of the social disadvantage some ethnic groups face in society. 
Stereotypical social attitudes towards different ethnic groups precede the instituting of 
group rights. And one justification for assigning ethnic groups rights is to overcome the 
very disadvantage posed by these stereotypical attitudes in society. Rather than viewing 
stereotyping as a reason for denying ethnic groups rights, liberals should view it as one 
more reason for assigning them.

Liberals opposed to assigning rights to ethnic groups may agree that stereotyping 
already exists in society. They still oppose ethnic group rights because they disagree 
about the consequences assigning rights will have on such stereotyping. Critics of ethnic 
group rights believe that stereotypical attitudes in society are strengthened, not weakened, 
by assigning ethnic groups rights.\textsuperscript{37} Since the stereotype now has not only social 
sanction, but also state sanction as an administrative convenience, it will acquire greater 
legitimacy. Those who adhered to this stereotype previously will now do so with greater 
justification. Those who did not share in the stereotype initially will now come to do so, 
as a consequence of the state’s administrative use of ethnic categories. Thus critics argue

\textsuperscript{35} This is the core idea of racism where a social hierarchy is seen as stemming from a natural one. Here 
biology as the study of nature is used to justify a social hierarchy based on ethnic/racial differences. See 
\textsuperscript{36} See Stephen Carter (1991) for this line of criticism of affirmative action programs.
\textsuperscript{37} In their ingenious survey of white attitudes on race, Sniderman and Carmines (1997) describe how even 
the mere mention of affirmative action can engender stereotyping and ill will towards Blacks. 
"Whites who have just been asked to give an opinion about affirmative action are significantly 
more likely to describe ‘most blacks’ as ‘lazy’ than are whites to whom affirmative action has not been 
mentioned. In addition they are significantly more likely to describe them as ‘irresponsible’ and 
‘arrogant’..." 
Affirmative action is not the primary reason why whites dislike blacks. Large numbers of them 
disliked blacks before racial quotas were ever dreamed of; large numbers would have continued to dislike 
blacks even if affirmative action had never been conceived of; and large numbers will dislike blacks even if 
affirmative action comes to a complete and total end. Still the Mere Mention Experiment illustrates the 
power of affirmative action to engender ill will." pp. 39-40.
that assigning rights to ethnic groups will only reinforce pre-existing social stereotypes about a particular ethnic group by giving it the imprimatur of the state.\textsuperscript{38}

However, this objection to assigning ethnic groups rights begs the question of why measures that favor members of ethnic and racial groups strengthen stereotyping, while measures that favor other types of groups - even when membership is derived from birth - do not.\textsuperscript{39} For political liberals, the answer is that stereotyping ethnic groups when they are assigned rights is, itself, a product of racist attitudes in society. The contrast between social attitudes towards affirmative action programs for minorities and social attitudes towards legacies - children of alumni - in elite North American universities illustrates the role of racism in the stereotyping objection to ethnic group rights.

Many elite universities in the United States carry out programs that seek to recruit members of under-represented ethnic and racial groups. These programs give preferences to members of ethnic groups over similarly qualified, or sometimes even more qualified Whites. These affirmative action programs usually have a number of parallel purposes. They seek to rectify a history of racism. They seek to help members of racial and ethnic minorities overcome disadvantages in educational and social opportunities due to contemporary racism. They seek to develop a diverse student body so as to give all students - not just minority students - a more inclusive experience in university. They seek to deepen intellectual and academic life by ensuring that scholarship with the perspective of minorities, particularly in areas that have been historically marginalised in academia, will be pursued in the university. And they seek to improve the social situation of minorities more generally, not simply those who are beneficiaries of these programs. Let us assume these goals are considered sufficiently important to justify affirmative action programs and these programs do not unfairly burden excluded Whites, who can pursue their education in less elite institutions.\textsuperscript{40}

\textsuperscript{38} Justice Thomas (ibid).
\textsuperscript{39} "(the) point is not really about a special difficulty in answering the qualification question, but about the insistence of raising that question in the case of Black Americans. Why the widespread skepticism regarding the achievements of affirmative action beneficiaries? Why the widespread and persistent assumption that others got where they are on their own steam? Beneficiaries do not have the privilege of deciding whether to put the qualification question to themselves; it is, insistently and insultingly, imposed upon them." Mehta, 1992, p. 21.
\textsuperscript{40} See Duncan Kennedy (1995) for a defense of affirmative action in law schools, where he develops some of these factors.
Some liberals object that despite their moral desirability, affirmative action programs should not be pursued because they stereotype students from ethnic and racial minorities. These programs make minorities feel less deserving of admission. They feel stigmatized and are marked with "a badge of inferiority" throughout their careers. Other students (White males), their professors, and the wider world will treat them with condescension and paternalism. Their individual achievements are undervalued, both by society and themselves. A Black or a Latino beneficiary of affirmative action cannot separate the component of her success that is individually hers from that which is derived from a special program. Subject to such relentless stereotyping, even the most academically gifted members of racial and ethnic minorities come to doubt their own capabilities. A program with benign intentions seeking to improve the social position of racial and ethnic minorities will ultimately harm them.\(^{41}\)

Contrast this with social views about another affirmative action program pursued by many elite North American educational institutions - that of legacies. Most elite universities in North America give preferences in admission to the children of alumni. The rationale for this includes strengthening institutional ties, improving fundraising by developing family loyalties and promoting a stronger sense of community. As in the case of affirmative action programs for racial and ethnic minorities, students admitted as legacies - who are mostly White - are given preferences over other similarly qualified or even more qualified applicants. Affirmative action for legacies ought to lead to stereotyping and stigmatising in the same way that affirmative action for racial and ethnic minorities does.

But others do not generally stereotype legacies as less deserving in the way they do ethnic minorities. And even if they do, White legacies do not go through university and then their entire careers with the additional burden of having been the recipients of preferential treatment in admissions. This distinction in the social attitudes towards legacies and members of ethnic minorities is indicative of the additional disadvantage the latter face due to stereotyping. Mainstream society questions the capabilities of members of disadvantaged ethnic minorities in a way that it does not do of members of relatively advantaged groups. Political liberals claim the distinction between social attitudes

\(^{41}\) Stephen Carter (1991) and Clarence Thomas, J. Concurring Judgment in *Adarand v. Pena*.
towards affirmative action beneficiaries who are legacies and towards those who are members of ethnic groups exposes pre-existing stereotypical attitudes behind opposition to assigning rights to ethnic groups. These attitudes are not the result of assigning rights to ethnic groups and they ought to carry no moral weight in evaluating the justice of policies and institutions.

Liberal critics of ethnic group rights have four responses to the analogy political liberals draw between legacies and ethnic minorities. The first response is that precisely because liberals draw an analogy between the two, they should not only reject affirmative action programs for ethnic groups, but they also should for legacies. The second is that social opposition to affirmative action programs for ethnic groups stems from doubts about their social desirability, rather than from stereotyping. The third is that legacies are not subject to stereotyping because they are not a social group. The fourth is that it is easier to discriminate against ethnic minorities than against legacies.

The first response is that liberals are not inconsistent if they deny preferential treatment to both ethnic groups and legacies. Thus liberals avoid the challenge posed by the example by simply rejecting preferences for legacies. Liberals do so on the basis that for all the reasons assigning rights to ethnic groups is morally undesirable, assigning special benefits to legacies also is. While this response may allow liberal critics of ethnic group rights to defend *themselves* from the charge of moral inconsistency, it still fails to account for the distinction in the social attitudes towards legacies and ethnic groups. It thus misconstrues the political liberal claim. The political liberal charge is not that liberal opponents of group rights support affirmative action for legacies but not for ethnic groups. Rather it is that liberal critics implicitly give moral weight to racist attitudes when they deny ethnic groups rights because of them. The point of exposing the disjunction between social attitudes to legacies and social attitudes to members of ethnic groups was not to argue that liberals ought to oppose affirmative action for both. Rather it is to show how not taking into consideration the unjust social attitudes that stereotype persons can indirectly lead liberals to perpetuate injustice.

The second response is that social opposition stems from doubts about the desirability of affirmative action programs for minorities, rather than from stereotyping. Most persons see the social benefits of programs for legacies. They believe these
programs provide tangible benefits for others by leading to stronger institutional loyalties and greater financial contributions. The benefits derived from affirmative action programs are intangible and do not directly affect others in society. Opponents of affirmative action do not stereotype ethnic minorities. They simply differ in their assessment about the benefits of these programs for society. But political liberals do not claim that there are no reasonable objections that can be raised against affirmative action for ethnic groups that cannot be raised against affirmative action for legacies. Nor do they deny that there are important political factors that may favor affirmative action for legacies but not for ethnic groups. Rather political liberals claim that when affirmative action programs are considered socially desirable, both for ethnic groups and for legacies, objections to the former on the basis of stereotyping should apply equally to the latter. That they do not so apply is not a reflection of the unfairness of affirmative action for ethnic groups and its fairness for legacies, but a reflection of the additional burden of stereotyping ethnic groups endure in society.

The third response to the racial/ethnic group and legacy analogy is that the former are subject to stronger stereotyping because they are a social group, while the latter are not subject to strong stereotyping because they are not a social group. Therefore, ethnic groups face stereotyping, but legacies do not. Legacies do not have a distinct identity as a social group. They do not associate, socialize, and live together. They are a group of individuals who happen to be admitted to a university under similar circumstances. Beyond this commonality on the basis of their admission to elite universities, they share few social characteristics.\(^{42}\) Even if we concede the premise that legacies share limited social characteristics, it does not explain why they should not be stereotyped and feel stigmatized. After all, the basis for stereotyping in the case of ethnic groups cannot simply be that they share certain social characteristics, but that others consider them individually undeserving of admission to elite universities.\(^{43}\) If the beneficiaries of preferences for ethnic groups are considered individually undeserving of such admission, so should legacies. And if the former are subject to stereotyping and the stigma of self-doubt so should the latter.

\(^{42}\) Though in most cases legacies are upper class White males who share similar characteristics.
This leads to the fourth response to the political liberal claim about stereotyping as racism. Namely, the accommodation of legacies and opposition to ethnic beneficiaries of affirmative action stem from the practical difficulties of identifying the former in order to stereotype them. These practical difficulties do not exist in identifying and stereotyping ethnic groups. Although others may view legacies as undeserving of special benefits, they are unable to distinguish legacies from students who are not. Legacies are ethnically similar to the mainstream student body, unlike students who are ethnic minorities. To stereotype a legacy, others need to identify him. This requires detailed information about the student’s achievements and family background. It is easier to identify and thus stereotype ethnic groups, however, because of physical and cultural differences. These differences are easily discernible, even in anonymous encounters, through body language, dress, style, and accent. Unlike a Black or a Latino, a White legacy cannot be identified through the type of minimal interaction that usually exists in the classroom. The distinction between the experience of legacies and that of ethnic beneficiaries of affirmative action programs, then, is not based on the inherent hostility others have towards ethnic groups, but on the practical feasibility of stereotyping in the case of the latter. Members of ethnic groups, who benefit from social policies like affirmative action, are stereotyped, while the less identifiable group of legacies is not. This is a fact of social life.

For political liberals, however, this response does not refute the claim that ethnic groups face the burden of stereotyping that legacies do not. It simply explains how they do so. The objection describes how members of ethnic groups are subject to stereotyping in a way that legacies are not. The objection from stereotyping is raised even when the group disadvantage is clear, the remedy is appropriate, and the ethnic group is treated as only an administrative convenience. It is more, not less odious for ethnic groups that the practice of social stereotyping can be put into effect in their case. Political liberals argue that stereotyping of ethnic groups when they are assigned rights ought not to be given weight in evaluating the justice of political institutions. That ethnic groups face the

43 If it were simply based on the fact that ethnic and racial groups shared common characteristics, then the claim that society stereotypes would established.
burden of stereotyping that other groups do not is an additional reason for assigning them rights, rather than a reason for not doing so.

The distinct social attitudes towards affirmative action for legacies versus that for ethnic minorities illustrates how the latter are subject to social stereotyping to which the former are not. This stereotyping precedes the assigning of rights to ethnic groups and is not simply a result of doing so. Furthermore, arguments against assigning rights to ethnic groups on the basis that they further aggravate these stereotypes, indirectly grant weight to these very stereotypical views in society. Finally, I argued that since the stereotyping of ethnic groups is morally unreasonable, it should not be considered a factor in evaluating the justice of assigning rights to ethnic groups. The next subsection examines the objection to assigning ethnic groups rights because it engenders resentment.

V. Assigning Rights to Ethnic Groups Leads to Resentment

When ethnic groups are assigned rights, non-members resent them.\(^4\) Therefore, some liberals argue that the liberal state ought to reject rights for ethnic groups. Non-members can resent members irrespective of whether there is a social disadvantage that justifies the rights assigned. Non-members resent members when there is no social disadvantage, when there are reasonable differences over whether there is one, and when there is a social disadvantage. I respond that resentment on the part of non-members in all three cases is not a reason for rejecting rights. If political liberals reject rights, it is not because of the resentment \textit{per se}, but because the rights claimed are unjustified. At worst, non-members' resentment makes the rights assigned politically undesirable and, at best, it reinforces why those rights are morally required in the first place.

First, ethnic groups can stake claims for rights even when there is no disadvantage. They do so either because they develop a sense of entitlement and refuse to give up rights assigned even after a disadvantage has been overcome, or because they simply seek additional social resources without a disadvantage that justifies it. In these cases the ethnic groups concerned are engaged in rent seeking, like many other groups in society. When a group seeks a greater share of the common resources without justifying

it in terms of a common social good or a specific disadvantage that members endure, non-members feel resentful. This is understandable because members' claim for additional resources is an unfair burden that non-members must bear and one that they can reasonably reject. The resentment non-members feel is heightened when the group that obtains rights is politically and economically powerful. Because non-members' resentment need not stem from hostility towards the group but from a violation of their sense of justice, it may not be open to condemnation. However, political liberals reject rights in this case not because of the resentment *per se*, but because the rights claimed are unjustified. The resentment engendered by assigning rights to ethnic groups here does not pose a political moral objection to assigning rights to ethnic groups.

Second, consider the case where there are reasonable differences over whether there is a social disadvantage. Reasonable persons can come to very different conclusions about the same set of claims. These reasonable differences arise from the burdens of judgment. They contrast with unreasonable differences that arise from a group's desire to extract more than their fair share of social resources or to deny to others their fair share. Rawls lists several sources of reasonable disagreement—the complexity of evidence, disagreement about the weights of different considerations, the vagueness of concepts, different experiences, different normative considerations, and the limitations imposed by social institutions in the values admitted.

These sources of reasonable disagreement are diverse. While most of these sources of reasonable disagreement do not necessarily correlate with membership in an ethnic group, some of them can. Rawls points out that "to some extent (how great we cannot tell) the way we assess evidence and weigh moral and political values is shaped by our total experience." An important aspect of this experience is membership in different social groups, including ethnic ones. The total experience of members of different ethnic and racial groups can be different enough that it can lead to divergence in

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45 "The idea of reasonable disagreement involves an account of the sources, or causes, of disagreement between reasonable persons so defined. These sources I refer to as the burdens of judgement. The account of these burdens must be such that it is fully compatible with, and so does not impugn, the reasonableness of those who disagree. What then goes wrong? An explanation of the right kind that the sources of reasonable disagreement – the burdens of judgment – among reasonable persons are the many hazards involved in the correct (and conscientious) exercise of our powers of reason and judgment in the ordinary course of political life.” John Rawls, 1993, pp. 55-56.

their judgments. Members of different ethnic groups can place different emphases when interpreting the same data. They may emphasize one set of factors over another and come to different conclusions about social policy.

Sometimes, reasonable differences about a social policy may coincide with ethnic groups, even where the beneficiaries of the social policy are not ethnically distinct. Here, all members of an ethnic group may support the same social policy, although the social policy does not benefit or burden them disproportionately. When a decision is made, members of an ethnic group may win out in the political competition when their preferred policy is accepted. Nevertheless non-members are unlikely to resent this loss. Although the non-members’ preferred policy is rejected, the policy itself does not affect them disproportionately. Since the differences are reasonable, no particular ethnic group benefits disproportionately, and because the political outcome is a result of fair competition, it is unlikely to lead to resentment.

At other times, reasonable differences over a social policy can coincide with its target groups or beneficiaries. A group may stake a claim for subsidies or rights based on a social disadvantage and others can reasonably differ. These reasonable differences will ultimately have to be resolved through political competition. One side will win and the other will lose. Under these circumstances the losers may feel resentful of the winners. But if the differences are indeed reasonable, the resentment has no basis in injustice. That the losers may feel resentful is not by itself a reason to deny ethnic groups the opportunity to pursue their claims politically.\footnote{However, if a group feels it is losing political competition whenever there is reasonable disagreement, their resentment may have a basis in injustice. They feel reasonable differences over the burdens of judgment work to the advantage of the more politically powerful group in society, whether or not it is in the minority. While they concede the disagreements are indeed reasonable, they resent the fact that these reasonable disagreements are always resolved to the advantage of a particular ethnic group. However, resentment here does not derive from assigning rights to a particular ethnic group. Rather it derives from the perception that the system of political representation gives an advantage to a particular ethnic group. This may be an important source of injustice and even discontent in a community, but it is not only due to the assigning of rights to ethnic groups.}

Finally, ethnic groups stake claims when there is a disadvantage. They argue that membership in their group is a good proxy for a disadvantage. They then seek support from the state to overcome the social disadvantages associated with membership in their particular group. Assume that the disadvantage is clear and the remedy does not unfairly
burden non-members, i.e., there are no reasonable disagreements. Even under these circumstances, liberal critics of ethnic groups argue, the state ought to refrain from assigning rights. They argue that doing so will lead to resentment on the part of non-members. Political liberals respond there will always be persons in a political community who will resent beneficiaries of a social policy, however justified it is. Some families with two parents will resent single parents when the state provides the latter with subsidies. Some of those who live uphill will resent those who live downhill for getting flood protection assistance from the state. And some of those who are healthy may resent those who are sick for getting state subsidized medical care. That such resentment exists is not a reason to deny state support to these groups when it is required to offset a disadvantage. And this is also true of ethnic groups. Political liberals thus argue that others' resenting groups assigned rights is not a political moral reason for denying them.

Liberal critics, however, argue that what distinguishes ethnic groups from others is the breadth and depth of the resentment engendered by assigning rights to them. Not only do many more non-members feel resentful, they also do so more intensely. Most persons believe rights should not be assigned on the basis of membership in an ethnic group. And it is the depth of this belief that invariably fuels resentment. But political liberals respond that rights should not be assigned on the basis of whether or not they induce resentment on the part of others. In the previous cases, where there was neither a disadvantage nor reasonable differences over its presence, resentment played no role in the decision on whether to assign rights. If resentment by itself is not relevant to assigning rights, then differences in the depth of resentment ought also not to be. Because political liberals reject the notion that resentment is a reason for rejecting rights, they reject the notion that a difference in the depth of resentment is.

Political liberals reject rights when there is no disadvantage, assign rights when there is one, and permit the political process to resolve the decision when there are reasonable differences over whether there is one. For political liberals, the resentment of non-members by itself plays no political moral role in the justice of assigning groups rights.
VI. Assigning Rights to Ethnic Groups Leads to Conflict?

The last objection is that assigning rights to ethnic groups leads to conflict and undermines political stability. Ethnic categories provide a powerful basis for potential group identification and mobilization. For example, unlike single parents and the least well-off, Blacks and Tamils form a coherent social and sometimes even political group. Thus, some liberals object that even if assigning rights to groups may be compatible with justice, the political competition that stems from debates over them and the resentment that arises from assigning them can instigate group conflict.48

The assignment of rights to ethnic groups in a culturally plural society gives precedence to ethnic claims and incentives to mobilize along ethnic lines. The formation of ethnic parties and organizations, and their articulation of socio-economic grievances in ethnic terms, inevitably leads to conflict. As political parties and organizations compete with each other for the support of their respective ethnic groups, they take increasingly extremist political positions. This fuels a process of political outbidding that exacerbates ethnic divisions and leads to the strengthening of more extremist political organizations. Politically less powerful and minority ethnic groups become further marginalized.49 The very groups most likely to require the rights that remedy social disadvantage are also least likely to get them. And when assigning rights leads to group conflict, it is the vulnerable groups that are adversely affected. Liberal critics thus argue that while assigning rights to ethnic groups may be morally desirable it is not politically desirable. And precisely because it is not politically desirable, political liberals ought not to support it.

48 "The most extraordinary result of strong identification with a group, particularly with an ethnic group or a nation, ... is the willingness to run grotesque risks of personal harm for a meager group benefit. ... there is a step wise progression from identification with a group, to mobilization of still stronger identification, to implicit conflict with another group, and finally to violence, particularly when both the group and the other group are faced with increasing incentives for pre-emptive action. People who would not have put themselves at risk at early stages take great risks at later stages, when they are more subject to group commitments and less subject to extra-group connections and when there are fewer opportunities for doing anything other than joining in group violence. In an extreme case, such as in many communities in Yugoslavia in the 1990s, it may become virtually impossible to stay in the community without joining in the violence." Russell Hardin, 1995, p. 23. Also see Hardin (1995) Chapter Six, "Violent Conflicts."

Practical considerations play an important role in the political liberal evaluation of political and social institutions. Political liberals make a distinction between designing institutions on the basis of a political conception of justice and on the basis of a comprehensive moral doctrine. It is the "basic structure" of society that is the subject of a political conception of justice, i.e., "the way in which the major social institutions fit together into one system, and how they assign fundamental rights and duties and shape the division of advantages that arises from social cooperation." If the design of a particular political institution, such as rights for ethnic groups, is precluded by practical considerations because it leads to group conflict, then it is also precluded by political moral ones. Political liberals do not deny that practical considerations play an important role in the political morality of assigning rights to ethnic groups, but they differ from liberal critics in their assessment of the political consequences of doing so.

They argue that assigning rights to ethnic groups and the ethnic competition it engenders need not lead to conflict and political instability. Under certain institutional conditions – when political competition along multiple lines of cleavage is encouraged -

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50 However, radical egalitarian and liberal autonomy advocates of assigning rights to ethnic groups can deny that practical considerations play a role in the morality of group rights. They can, consistent with their commitment to a philosophical liberalism, argue that if assigning ethnic groups rights invariably undermines social unity, political communities may refrain from doing so. But to not assign rights to ethnic groups because it may instigate political conflict is ultimately a compromise of morality with practicality. It is not a requirement of political morality. While radical egalitarians and autonomy liberals incorporate considerations of practicality into their design of political institutions, they refuse to do so into their judgement of the morality of those institutions. For the radical egalitarian version of this position see G. A. Cohen's (2000) critique of Rawls. For a liberal autonomy version of this position see Will Kymlicka (February 1992).

51 "An essential feature of the contractarian conception of justice is that the basic structure of society is the first subject of justice. The contract view begins by trying to work out a theory of justice for this special but plainly very important case; and the conception of justice that results has a certain regulative primacy with respect to the principles and standards appropriate for other cases. The basic structure is understood as the way in which the major social institutions fit together into one system, and how they assign fundamental rights and duties and shape the division of advantages that arise from social cooperation. Thus the political constitution, the legally recognized forms of property, and the organization of the economy, and the nature of the family, all belong to the basic structure. The initial objective of the theory is to find a conception, the first principles of which provide reasonable guidelines for the classical and familiar questions of social justice in connection with this complex of institutions. These questions define the data, so to speak, for which the theory seeks an account. There is no attempt to formulate first principles that apply equally to all subjects. Rather, on this view, a theory must develop principles for the relevant subjects step by step in some appropriate sequence."


52 See "Religion, Equality, and Cultural Rights," Chapter IV. of this dissertation, for a discussion of how practical considerations are implicated in the political morality of state subsidies for religion.

53 I derive the following points from Kanchan Chandra (1999).
ethnic competition can reinforce democratic stability by producing fluid majorities and minorities. Assigning rights to subordinate groups can strengthen the legitimacy of democratic institutions by indicating that their interests are also being taken into consideration. And even in the worst case, when assigning rights to ethnic groups leads to conflict, it is usually moderate and can be contained by democratic institutions. At most, political liberals concede that whether assigning rights to ethnic groups leads to conflict is an empirical claim that needs to be evaluated in particular political and social circumstances, not a political moral one that leads to the rejection of ethnic group rights under all political and social circumstances.

VII. Conclusion

In this chapter I described the theoretical differences between liberal supporters of assigning rights to ethnic groups and liberal opponents of doing so. As in many debates in political theory, the political moral differences often converge on empirical claims about the political consequences of establishing certain institutions rather than others. Thus, liberals wary of assigning rights to ethnic groups need to make the empirical case for why doing so will instigate ethnic conflict. Their dismissal of ethnic group rights as violating liberalism's moral commitment to the individual is irrelevant to the political liberal defense of group rights.

Liberal supporters of assigning rights to ethnic groups may have important moral arguments to make in favor of using ethnic classifications, but this is not enough. They also need to make practical and institutional ones. They need to show, not only that ensuring political equality for members can require assigning rights to ethnic groups, but also that these rights do not unfairly burden non-members and undermine political stability.
Chapter III

Targeting Groups and Securing Culture

The previous chapter examined the liberal reluctance to use group classifications for assigning rights. Liberals are morally committed to the individual as the basic unit of a political community. They are thus concerned that assigning groups rights violates this political moral commitment. However, I argue liberals need not grant moral status to a group in order to assign members special rights. Assigning rights to groups can stem from the need to have manageable criteria for pursuing social policies, rectifying disadvantages and securing reasonable interests. Trying to fine tune policies to individual needs alone will lead to a loss of state efficiency and a violation of individual privacy due to intense monitoring by the state. Ultimately, liberal opposition to assigning group rights stems from the concern that assigning rights to ethnic communities can lead to conflict. I concluded that whether assigning rights to ethnic groups leads to conflict is an empirical claim that needs to be evaluated in particular political circumstances, not a political moral claim that leads to the rejection of rights in all political circumstances. Thus group rights can be justified from a liberal concern about the well-being of individuals who comprise the group, provided that membership is a good proxy for a social disadvantage members endure or a reasonable interest they wish to secure.

This chapter examines specific liberal rationales for assigning rights to culturally distinct groups. First political liberals target members of cultural groups to ensure socio-economic equality, rectify past injustice and counter discrimination. While these measures use membership in a cultural community as a proxy for socio-economic disadvantage, they do not directly secure culture. Second political liberals support measures that enable groups to secure their culture, themselves. These measures, based on freedom of association, help cultural minorities resolve collective action problems. While these measures directly secure the culture of a group, the cost is borne entirely by members. Third political liberals support a minority culture as a means of promoting cultural diversity. They do so on the basis that a more complex common culture promotes individual well-being for everyone. While the cost of promoting a particular
culture is borne by non-members, the benefits of a complex common culture also accrue to them. Addressing cultural claims that go beyond this entails subsidizing the expensive culture of groups because the cost of maintaining it leads to socio-economic inequality for members. I examine the conditions under which liberals can justify such subsidies in chapters IV and V.

This chapter is organized as follows. Part II describes liberal rationales for assigning rights to cultural groups that eliminate economic inequality, rectify past injustice and counter discrimination. Part III describes group rights that help resolve collective action problems and uphold associational freedoms for cultural groups. Part IV provides a liberal rational for group rights that promotes a common cultural structure that is diverse. Part V concludes that any further support from the state leads to subsidies for expensive culture.

II. Promoting Socio-Economic Justice

This section discusses liberal rationales for group claims that do not directly secure culture. They are based on ensuring economic equality, rectifying past injustice and countering discrimination. Cultural groups may be targeted when these claims are addressed, however the claims themselves do not secure culture, directly. These claims can also be made by class, regional or other social groups. There is nothing about the cultural nature of a group that turns on these claims. And to the extent that membership in a group is a good proxy for inequality, assigning rights to groups to address these claims is compatible with political liberalism.

II. a. Economic Equality. Culturally distinct groups can be the target of special rights when they are economically subordinate. Some groups are economically worse off than others. Such groups can be regional, gender, or cultural. For example, unequal development in a country can lead to economic inequalities between regions. The reasons for this inequality may include low levels of investment, past discrimination and the absence of natural resources. Ensuring economic equality may require the redistribution of resources from regions that are better off to regions that are worse off. This may also be the case, say, with women in a society. Women are invariably
economically worse than men in all societies. Their income is limited by the unequal burden they bear in housework and childcare. It is often constrained by discrimination in the workplace and unequal property rights. Similarly, culturally different groups may occupy subordinate socioeconomic positions.\textsuperscript{54} The reasons for this inequality may range from past discrimination, present discrimination, the absence of resources, the lack of skills to work in a modern economy or simply the absence of social and economic opportunities. In all of these cases political liberals can support redistribution that redresses economic inequality.

Consider a political order based on a rawlsian public conception of justice. Such a political order will recognize the basic liberties and redistribute resources in ways that benefit the least well-off. A minority cultural group may occupy the position of the least well-off in a liberal society. If group membership is a good proxy for inequality and a practicable means for predicting a person’s socio-economic position, then the state may assign rights - target members to whom income and wealth should be transferred - on the basis of membership in an ethno cultural group.\textsuperscript{55}

Native Americans in the United States, Hill-country Tamils in Sri Lanka, Native Canadians in Canada, and “Tribal” and Dalit communities in India, are examples of culturally distinct communities who occupy the most economically subordinate positions in their respective political communities. The liberal state may as a means of promoting socio-economic equality target distributive measures towards these groups. As a practical political measure of structuring the political institutions of a social order to benefit the least well-off the liberal state may provide these communities with material resources to alleviate their social and economic circumstances. In doing so, the state targets an ethno-cultural community for economic redistribution in a way that is compatible with a rawlsian scheme of distribution. The choice of an ethno-cultural group rather than an income (or class) group, in this case, rests on the close social relationship

\textsuperscript{54} The idea is that there is a parallel between the social division of labour and ethnicity leading to an “ethnic division of labour” see Myron Weiner (1978). Donald Horowitz (1986) uses the term “ranked societies to refer to political communities where members of one ethnic group are socio-economically subordinate to members of another.

\textsuperscript{55} However, this economically subordinate position must not stem from an expensive taste or expensive cultural practices. The question of whether “expensive” cultural practices are entitled to subsidies is the central problem of this thesis. I address this in the next two chapters.
between economic position and ethno-cultural community it does not rest on the desire to support a particular community's culture.

The rights that communities enjoy due to economic redistribution may be group-specific to the extent they target particular communities, but they are not cultural rights. However subordinate the economic position of a minority cultural community in a rawlsian order, they will not be entitled to cultural rights because of it. The economic resources members of a poorer cultural community are entitled to is a matter of socio-economic justice, not of cultural rights. These claims are indistinguishable from the claims of a subordinate social class. Nevertheless, they justify targeting members of a culturally distinct group for redistribution.

II.b. Past Injustice. Injustices have been inflicted on diverse cultural groups and in very diverse circumstances. The expulsion and killing of indigenous peoples in the Americas and Australia, the incarceration of Japanese in the United States and the murder of Jews by the Nazis during World War II are some examples. Culturally distinct groups who have suffered injustice in the past may be entitled to compensation. While the group may be culturally distinct, the compensation does not turn on this. It depends on the past injustice. This is not a cultural claim, but a rectificatory one. The question of when precisely a group is entitled to rectificatory justice and the moral basis for evaluating the extent of the claim is more complicated than it appears at first sight. There is considerable controversy and debate about these past injustices and how they should be redressed politically.

Theories of historical entitlement focus on how the original circumstances – say a distribution of land - have been altered by an injustice. For example, Nozick argues the distribution that emerges from a just original acquisition, and voluntary transfer and exchange of property is just irrespective of the pattern it leads to. He argues theories of justice that focus on the pattern of a distribution of goods, such as Rawls's, lead to interference in the lives of individuals in a way that violates liberty. Compensation for a past injustice ought to be based on how the past injustice affects current distribution. The

challenge then is to workout a current distribution of property that would effectively capture the counterfactual distribution in the absence of the injustice.

Theories that focus more on current circumstances rather than historical injustice, point to the difficulties of actually assessing the counterfactual distribution of resources after an injustice has been perpetrated.\textsuperscript{57} For example, Waldron suggests that historical injustice can be superceded by social circumstances. Even if property has been taken unjustly from communities, changes in social circumstances – the passage of time and the current distribution of resources – can make historical injustice an unfair basis for redistributing resources. While this can lead to a moral hazard, it is still hard to ignore the fact that people who had claims are no longer alive, others have been born, and in any case any attempt at accurately reconstructing the counterfactual runs up against severe informational constraints. Intuitively, it also seems harder for richer groups to seek rectificatory justice from poorer ones, however valid the claims of past injustice, than for poorer groups to pursue claims against richer ones. This suggests that what often exercises our moral concerns in cases of past injustice is the current unequal circumstances of the group.

Still, even if historical injustice is superceded in distributional terms it may still be important in symbolic terms. Acknowledging a past injustice through monetary compensation may be an important way of publicly recognizing that an injustice did happen. Whatever the challenges to evaluating reparations for a past injustice, redressing past injustice is compatible with liberalism and is yet another liberal rationale for targeting cultural groups for special rights. Nevertheless, it is not a cultural right. While the group targeted may be “cultural,” there is nothing about the nature of rectificatory justice that requires that it be so.

\textit{II.c. Countering Discrimination.} Culturally distinct groups seek support from the liberal state to counter discrimination. The clearest form of discrimination is outright prejudice against members of a particular religious, racial or ethnic group. Here members of a minority group are excluded from enjoying the social opportunities - goods and services - available to similarly situated members of the dominant group. They pay

more and get less. Businesses refuse to hire them; universities refuse to admit them; and landlords refuse to rent homes to them. These are clear violations of equality of opportunity and run counter to the basic tenets of most liberals. There is no dispute that liberal egalitarians require state intervention to prevent these forms of discrimination.\textsuperscript{58} And they do so, even if these forms of discrimination are based on sexual orientation or gender, rather than culture. Nothing about countering discrimination turns on membership in a cultural community.

Discrimination can also be subtle, taking the form of exclusion from networks that affect social and economic opportunities. There are three types of networks that influence socio-economic opportunities - market, social and personal. The discrimination becomes increasingly subtle and harder to define as we go from market and social networks, to more personal ones. This can lead to disagreement, not only about the extent of discrimination, but also about the remedies to address it. Consider the exclusion of groups from market opportunities, such as subcontracting. This exclusion need not be caused by active discrimination in the present. It is often a consequence of past discrimination, where groups who lack the experience and opportunities to participate in subcontracting continue to be excluded on the basis of "objective" criteria. Anti-discrimination programs that favor excluded groups in subcontracting, for example, rely on the claim that the failure of these groups to meet these "objective" criteria is usually due to the absence of opportunities for them to learn how to do so, in the first place. And providing these opportunities requires some state intervention.\textsuperscript{59} The justice of this intervention also depends on the extent to which it unfairly restricts the socio-economic opportunities of non-members.

A second type of network that affects opportunities is social. Even after a person is included in market networks where decisions are made according to "objective" criteria, she could still be excluded from social networks where deals are cut on the basis of more subjective ones. Here an individual's access to membership in a club, for example, can affect her socio-economic opportunities. Thus state policies have often

\textsuperscript{58} Though there is dispute about whether libertarians also believe the state should intervene, or prefer to leave these forms of discrimination to be resolved entirely by the market.
limited the restrictions such social networks can impose on membership qualifications, or even banned them altogether. Intervention by the state in social networks are harder to defend than direct intervention in market networks, because the exclusion that is being challenged - social - violates equality of economic opportunity indirectly, not directly.60

A third type of network that affects economic opportunities is personal, such as networks of friends formed outside of work or even at work. Outside of work they can affect a person’s chances of obtaining information about jobs and economic opportunities. At work they can affect a person’s prospects of promotions and their enjoyment of employment benefits. This type of network is considered the source of the “glass ceiling” problem faced by subordinate groups. It is not that bosses exclude minorities purposefully, but that they invariably socialize in their personal lives with others who are like them. This develops affective ties between the bosses and their favorites, which invariably influence decisions, such as promotions, where subjective factors can often make a difference. Whom a boss plays with can affect whom he promotes.61

Pinpointing and remedying these forms of discrimination can be particularly difficult for a number of reasons.62 Pinpointing discrimination is hard when criteria for promotion are unclear. Even when the criteria are clear, favoritism can exclude members of subordinate groups from the opportunity to cultivate the very skills that will lead to promotion. Often the only remedy to this form of discrimination is pursuing a system of quotas. But a policy of quotas can come up against an insufficient pool of qualified candidates from subordinate groups due to their subordinate social position, itself. In which case it seems unreasonable to blame a particular company for discrimination, when under-representation of a group is the consequence of a broader social exclusion rather than a specific policy of discrimination. Moreover, any policy that addresses these subtle

59 These kinds of programs have been a common feature of federal government policy in the United States, in the past. Although they were recently declared unconstitutional in a US Supreme Court decision (Adarand Constructors, Inc. v. Pena, 512 US 200, 1995).
60 Nevertheless, the US Supreme Court has sustained restrictions against large New York clubs by the state government in New York on this basis.
61 For an interesting discussion of the impact of personal friendship on promotion in the workplace see Theresa M. Beiner, 1996.
62 For a valuable discussion of affirmative action that addresses some of these problems see Duncan Kennedy (1993).
forms of discrimination is invariably vulnerable to criticism that it leads to the unfair treatment of individual members of the dominant community. Finally, remedying these discriminatory practices implicates associational freedoms directly, especially in the case of personal friendship in the workplace.

The tensions caused by policies to counter discrimination, such as affirmative action and quotas, are exacerbated by unequal access to income and wealth. The opposition to these programs, and the conflicts they give rise to will be attenuated in a socio-economically egalitarian society. There will be less at stake materially both in pursuing or opposing these programs. Still, liberal egalitarians believe that such programs are important for ensuring equality of opportunity in a socially hierarchical society. Whatever the debate about the precise nature of these programs, or the extent to which they are in tension with other social values, liberals agree that their resolution does not rest on whether the subordinate group is culturally distinct or not. While the fact of cultural distinctness may be indicative of a potential for discrimination, it, alone, fails to warrant a claim for a remedy. Such a claim exists only when it is coupled with an experience of exclusion. Under these circumstances liberals support special measures that target minority cultural groups. These same measures can also target groups who may be discriminated due to gender, regional origin, or sexual orientation. Nevertheless, countering discrimination provides a liberal rationale for the state to institute special measures for members of culturally distinct groups.

In this section I outlined three liberal justifications for targeting cultural groups - ensuring economic equality, rectifying past injustice and countering discrimination. While these concerns lead liberals to target cultural groups for granting rights, they do not secure the culture of a group. Groups based on class, region, gender and sexual preference can also be the targets of the above measures. Still these measures are a requirement of justice and they help a group secure its culture, indirectly.

III. Securing a Group’s Cultural Practices

Culturally distinct groups seek support from the state to help them secure their culture themselves. This section addresses two liberal rationales that enable members of a culturally distinct group to secure their culture, themselves. The first rationale is the
provision of collective goods and the second is the upholding of associational freedoms. The state can setup institutions that enable members of a cultural group to secure their culture themselves. This support does not require subsidies or adversely affect non-members. It is simply a means to securing a collective good by resolving collective action problems. The liberal state regularly supports institutions that resolve collective action problems in a number of areas, including collective bargaining for workers, basic research, parks and clean air. The liberal state is also obliged to uphold associational freedoms. The state can recognize intimate attachments of minority cultural groups and grant exemptions to uniform rules on this basis.

III.a. Collective Good. From the perspective of members of a distinct cultural community their culture can be a collective good that is subject to what economists refer to as public goods problems. Securing their culture then requires centralized intervention to resolve collective action problems. Collective goods are non-exclusive, i.e., it is hard to exclude individuals who do not pay for them from enjoying their benefits and non-rival, the marginal cost of an additional person enjoying it is zero. This leads to severe coordination problems in the securing of public goods. Unless centralized action is taken by the state the good of a distinct culture can be underprovided leading to a market failure. The underprovision is due to the standard prisoner’s dilemma and assurance problems associated with the provision of collective goods.

The preferences of an individual member of a particular class or a group in the provision of a collective good are in the following descending order. Her first preference is that she enjoys the collective good while others bear the burden of its provision, i.e. to be a free-rider. Her second preference is that she share equally in the costs of securing the collective good, as well as, in the benefits of enjoying it. Her last preference is that nobody bear the burden of the cost, failing to secure the collective good, altogether. If all individuals act on their first preference – to be free-riders – and pursue a similar strategy, coordination failures will inevitably lead to a situation where nobody bears the burden of

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63 My discussion of culture as a collective good in this section is derived from Alan Patten (1996). Although Patten refers to these goods as public goods rather than collective goods. I use the term collective goods because these goods are group specific, i.e., while they may be public goods for the group concerned, they are not public goods more generally.
the cost. The collective good will then not be provided for, even though the second option - equal sharing of the cost and enjoyment of the benefits – is still preferable to no collective good, altogether. This is a market failure in the provision of a good. Under these circumstances individuals would prefer a situation where the state or a centralized agency ensures all individuals, including themselves, contribute towards the provision of the collective good equally over one where none does.

State intervention to ensure provision of a collective good is then compatible with treating all individuals as equals. When a municipal government constructs a park or the national government requires the use of lead-free gasoline it is helping to secure collective goods. Everyone benefits from access to open public spaces and clean air. Unless the city government taxes individuals to maintain the park or the national government enforces restrictions on gasoline these collective goods will not be available to all residents of the city or citizens of the state. Consider the benefits to workers from collective bargaining. By placing restrictions on workers - a closed shop and requiring them to pay dues to the union that represents them - the state enables workers to secure the collective good of stronger bargaining power. Here the state enacts laws and enforces restrictions on the group that lead to better wages and working conditions for them. Helping trade unions resolve collective action problems in bargaining this way is considered compatible with, if not required by a liberal commitment to egalitarianism, given the bargaining power enjoyed by capital. A similar argument can be made to obtain the support of the liberal state for members of minority cultural groups to secure their culture.

Consider a classic dilemma faced by members of many minority cultures. Minority culture F lives in a territory adjacent to the territory inhabited by majority culture E in the same political community. Assume that members of culture F are concerned that F should flourish as a distinct culture. At the same time most members of F wish to engage with E-culture in their day to day lives in terms of work, business and

65 There is of course a fourth preference which is that she alone bear the burden of the cost while everyone enjoys the benefits. I assume here that as in the case of most public goods this is the least favorable strategy or any individual.
67 The example is taken from Patten, pp. 12-14.
travel because of the socio-economic opportunities it provides them. Parents who are members of culture F find that if their children are educated in E-language they will have advantages in social and economic opportunities, that other members of F will not. Their preference ordering in terms of the survival of culture F and education in language E will be as follows:

1. Others educate their children in F-language and they educate their children in E-language.
2. Others educate their children in F-language and they do the same.
3. Others educate their children in E-language and they do the same.
4. Others educate their children in E-language and they educate their children in F-language.

What parents who are members of F culture most want is that others should contribute to the maintenance of the culture by educating their children in the community’s language but that they give their children a special advantage by educating them in E-language. This way their children will be able to enjoy both the cultural context provided by F culture, learning F language at home and in their communities, and the socio-economic opportunities provided by E culture. However because of their desire to maintain their culture they would prefer a situation in which all forgo the opportunity to give their children this additional socio-economic advantage over one where none do.\(^{68}\)

Under these circumstances providing education only in F language within the territory inhabited by F is compatible with the preferences of members of F culture and helps them ensure the survival of their culture as a collective good for them.

The basic principle at stake in the restrictions on choice in the language of education - the resolution of collective action problems - is compatible with liberal egalitarian principles. However, the justification of a particular restriction will depend, both on its extent and its support within the community. In theory, institutions that

\(^{68}\) I ignore here the moral issues raised by parental authority in education. See Amy Gutman (1987), also see Wisconsin v. Yoder, 406 U.S. 205 (1972). I assume that members of E culture are indifferent to the choices made by members of F and will not be unfairly disadvantaged by them. Because they are in the majority, learning F does not expand the social and economic opportunities of E members. I also assume education of F children in F-language will not lead to any additional cost to members of E, i.e., the additional cost of education due to diseconomies of scale, if any, will be borne entirely by members of F.
resolve collective action problems should have the unanimous support of those who are restricted by them. But this is rarely the case in practice. The problem of inequality arises in these cases precisely because some people do not wish to have the collective goods that these restrictions or taxes seek to provide. Liberals have generally opposed restricting or taxing individuals for goods and services they may not want on the basis this constitutes an inequality. But the state's failure to resolve collective action problems by instituting restrictions can also lead to an inequality for persons who want collective goods that cannot be secured through the free market, alone. There will be some trade-off between fulfilling a community's desire to secure a collective good and protecting individual members of this community from paying for goods and services and facing restrictions they may not want. By considering the case of F-language speakers, I will briefly outline how liberals can evaluate the justice of the restrictions on members of a group in order to secure their culture.

In the above example, we assumed the preference ordering of all F language speakers is the same. This is rarely the case. Some members of F community may simply be indifferent to the continuation of their culture. They may seek language instruction for their children irrespective of its impact on the continuation of their culture. Restricting them to F language instruction, then, would compel them to contribute towards a good - F culture - which they do not seek. When are such restrictions justified, and when do they lead to inequalities and can be reasonably rejected? Restrictions or taxes on members of a cultural minority, such as F, to help them secure their culture will invariably involve categorical identification based on ascriptive characteristics such as ethnicity or race. This is because membership in F - an ascriptive category - will be used as a proxy to determine a person's desire to secure her culture. Who is to be included in a scheme for resolving collective action problems will depend on their membership in community F. When is such categorical inclusion in a scheme that restricts a person by membership in an ethnic group permissible?

There are three guiding principles that can be utilized to evaluate the permissibility of such a scheme when it is supported by the majority of members of F

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69 If it were, determining preferences and resolving collective action problems of this type would pose empirical, though no ethical problems.
The first is that a restriction is presumptively legitimate if it is purpose protecting. This requires there be a straightforward rational relation between the restriction or tax imposed and the cultural good that is sought. The second is that even if it is purpose protecting, a scheme is presumptively illegitimate if it is opportunity depriving. A scheme that leads to the socio-economic inequality of some members viz a viz other members of the group is presumptively illegitimate. Finally even if it is purpose protecting and is not opportunity depriving, a scheme to resolve collective action problems is presumptively illegitimate if it is integrity depriving. Such a scheme is presumptively illegitimate, if it limits a person’s possibility of enjoying intimate attachments and pursuing a distinct conception of the good by exercising basic freedoms, such as conscience and expression. I will apply these guiding principles to the case of compulsory instruction in F language for members of F community.

Consider the scenario where community F inhabits a territory that is homogenous. A majority of members of community F wish to have all children educated in language F. They do so because they value their language and they believe that is the best way to ensure their culture continues to remain distinct. As citizens of a political community that includes a majority of E members, they permit E - language training as a second language. This they do as a means to ensure civic participation and political deliberation. However, they reject education in E - language, as well as bilingual education. A minority of community F, however, is indifferent to whether their language continues to flourish and their culture maintains its distinct identity. They prefer their children be educated in the language of the majority - E - who live in the adjacent territory, even if this will invariably lead to the eventual disappearance of their culture-F. This minority seeks to have the option to educate their children in E language, irrespective of what the more culturally conscious members of their community do. A vote by members of F on these two choices leads to a defeat for the minority. F language is adopted as the only language of education in the territory. A minority of F community is being compelled to

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70 Patten, 1996.
71 This section utilizes Stuart White’s (1997) discussion of the legitimacy of categorical exclusion from associations to help formulate a basis for the legitimacy of categorical inclusion in securing a collective good.
educate their children in a language other than their preferred choice. Is this restriction on minority members of F permissible?

The first guiding principle that needs to be invoked is whether the restriction is rationally related to the desired goal of ensuring the continuation of F-community’s language. This requirement is minimal. It does not require the means be the least restrictive possible for ensuring the continuity of the culture. The point of this guiding principle is to preclude restrictions that are irrational on their face. For example, a measure that gives tax subsidies to businessmen of F community to ensure the continuity of the culture would not be purpose protecting. There is no clear relation between the measure - tax subsidies for businessmen - and the goal - ensuring the continuity of F culture. Such a scheme appears to favor a particular subsection of F, rather than help maintain its culture. In the above example restricting education to instruction in F language is purpose protecting. It helps ensure members of community F are able to maintain their culture.

Are such restrictions opportunity depriving? Do these restrictions deprive members of community F who wish to study in E language of opportunities? This requires an assessment of whether the members of F community who wish to study in E language are a subordinate subgroup of F denied access to social and economic opportunities within F. If this were the case, then the restriction would be opportunity depriving irrespective of whether it was purpose-protecting. The consequence of maintaining the culture through a required education in F language will be a deprivation of social opportunities for a minority of F. On the other hand if all members of community F were affected equally by the choice of language instruction this would not be opportunity depriving.

Members of F who may still wish to avail themselves of the opportunities in E culture through a scheme that teaches E as a second language. Members of F community who feel that even a scheme of instruction that teaches E as a second language does not provide their children with the skills to engage with E community, still have other options open to them. They may educate their children privately in E language or they may simply move to the territory inhabited by E community. Even with all of these options,

72 This is not to deny that under some circumstances there might be.
some members of F community who wish to educate their children in E language will be clearly subject to a restriction to secure a good they do not seek. But not doing so, will lead to an inequality for other members of F. Either way, there will be some inequality in this case and provided the restriction is not opportunity depriving in a way that leads to the subordination of members of F with minority preferences these restrictions are permissible.

Is such a restriction integrity depriving? Does the requirement to compel members of F to be educated in F language violate important expressive commitments or the development of their ethical personality. In most instances it is hard to see how requiring members of F to study in F language will violate important integrity interests. However, there are some instances when exemptions may be necessary. For example members of F culture may believe that F is a sacred language that may only be used for religious purposes. Unlike others who oppose the use of F language in education because they are seeking socio-economic opportunities, these members of F are seeking to protect their integrity interests. They may be granted exemptions to educate their children in E language as a means of protecting their integrity interests. In this way liberal can evaluate the political morality of measures used to resolve collective action problems within a cultural community.

Restricting the language of education is simply one of many means of resolving collective action problems to help secure a community’s culture. Common ownership of land is another. Many cultural communities own land collectively to maintain cultural practices, either because of a way of life that is tied to land or because of the economic benefits that can accrue from it. Individual members cannot alienate “their share” of collectively owned land. This can be an impediment to an individual member of a minority culture who wishes to “cash in” her share of land and exit from a community. At the same time, collective ownership of land may also be one of the few ways economically vulnerable minority communities can ensure a basic standard of living for their members and secure their culture. Under these circumstances, what determines the permissibility of a scheme of common ownership is the extent to which the control of

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73 Some Orthodox Jews use Hebrew only for religious purposes. They refuse to use it in secular circumstances. They view such a use of Hebrew as a violation of their religious beliefs.
land is truly democratic and not a means by which a powerful subgroup dominates others in a community.\textsuperscript{74}

The above discussion simply outlines how liberals may proceed to evaluate the political morality of a particular scheme for securing culture as a collective good for a community. It illustrates how such a political moral evaluation need neither be \textit{ad hoc} nor dependent simply on the relative political power of cultural groups in society. Whatever the problems of determining the unanimity of support for securing particular cultural goods and practices, liberal egalitarians can justify collective mechanisms to secure them. And it is this that justifies restricting and taxing members of the minority, whose culture is to be maintained, but not others. To the extent that these mechanisms are instituted to resolve collective action problems of the minority culture, and they do not restrict or unfairly disadvantage others, they cannot be reasonably rejected as illiberal.

\textit{III.b. Upholding Associational Freedoms.} The third set of claims made by members of a cultural group involves associational freedoms. Here groups seek to have different laws govern their customary practices. These laws reflect their particular cultural practices in areas such as family law and land-ownership. The rationale for this type of legal pluralism is that persons have the freedom to associate in ways they wish, provided the rules of association do not unfairly disadvantage others. Nevertheless, recognizing freedom of association and customary practices leads to "unequal" privileges for members of minority cultures. It gives some cultural groups the right to choose laws and regulations that are not available to others. In these cases, being a member of a minority cultural community increases a person's options relative to other members of a political community. While this appears to be contrary to liberalism, it need not be.

Consider the case of differential marriage laws for different cultural groups. One set of laws - the general laws - apply to the entire country. Any citizen has a right to be married under these laws. Another set of laws - the customary law - applies only to a single cultural group.\textsuperscript{75} A member of a cultural minority may choose to marry, either

\textsuperscript{74} For a very insightful discussion of collective land ownership as a means to cultural preservation and the questions it raises about democratic control, see Joseph Carens (1992).

\textsuperscript{75} This is a stylized description of different personal laws for the upcountry and low-country Sinhalese in Sri Lanka. The difference in these laws are a result of colonialism. Since the low-country was colonised
under the general law or under customary law. A non-member has no option. She must marry under the general law. Divorce, the division of property, and other conflicts will all be dealt with under the law that was used to get married. Clearly a member of a minority culture here has more options than a non-member. But it is not clear that a non-member is disadvantaged because she is deprived of the option of a customary marriage. The customs of such a marriage and the family practices surrounding it are not options to her. The key issue here is not that there are two different legal codes for family law - but that both these codes are compatible with treating individuals as equals, particularly women.\footnote{Even if the different laws for different cultural communities need not be illiberal critics of legal pluralism object they can lead to greater costs to the political community in other ways. Recognizing legal pluralism for different cultural communities leads to a more complex legal system that can adversely affect the implementation of the law. The costs and delays involved in legal administration increases because judges need to be versed in very diverse legal traditions and customs. Moreover, the diversity of overlapping legal systems can provide a means for persons to evade the law through legal loop-holes. For example, men who marry under one legal system may seek to evade alimony and child support payments by trying to divorce under another, or seek to avoid divorce by marrying under another law.\footnote{Legal pluralism also discourages cross-cultural relationships such as marriage because of the complications of determining the legal rights of different parties. Clearly, non-members bear a significant burden of the additional cost due to plural legal systems in the same political community.} Legal pluralism also discourages cross-cultural relationships such as marriage because of the complications of determining the legal rights of different parties. Clearly, non-members bear a significant burden of the additional cost due to plural legal systems in the same political community.

\footnote{first they gradually adopted western-style family laws. Subsequently, when the upcountry was colonised they managed to retain two distinct customary marriage codes - diga and binna - to reflect two types of customary marriages. These codes continue to have legal validity today (Muttetuwegama, 1997).\footnote{Women's unequal position in some cultural communities has often been raised as an obstacle to recognizing legal pluralism in this way. But it is not always the case that women are automatically disadvantaged in customary practices. There are many situations where women's property and rights are better protected by customary practices than the general civil code. The case of upcountry marriage law in Sri Lanka is an example (Muttetuwegama, 1997).\footnote{For example, in Sri Lanka men who were unable to obtain a divorce or simply did not wish to, converted to Islam in order to marry again because polygamy is recognized under Muslim law in Sri Lanka. This loophole was recently closed with the Supreme Court decision in “Abeyesundere vs. Abeyesundere,” Appeal No. 70996. The Supreme Court of the Democratic Socialist Republic of Sri Lanka, which overruled Attorney General vs. Reid, 67 NLR 25. In this new decision the Supreme Court argued that while a person had a right to convert to whatever religion he chose, that conversion did not automatically free him of obligations he may have had under the personal law that previously applied to him.}}
However, denying legal pluralism altogether can lead to a significant burden for minority cultural communities. Many traditional cultural practices existed prior to the "intrusion" of the liberal state and its laws. And a person has a reasonable interest in ensuring some continuity and regularity in the laws that govern her life, provided that such continuity is not obtained by unfairly depriving others. Denying recognition of customary practices will disrupt this continuity and regularity. In instances where these practices are central to a community’s way of life, it can also disrupt the community. There is bound to be a cost, whether there is a uniform legal system or whether there is a plural one with special laws for minority cultural communities. In the former case the burden will be borne entirely by the minority cultural community, in the latter case, it will be borne by both. While there is an inequality either way, group specific laws in areas such as family law and some aspects of civil law are compatible with liberalism. Legal pluralism helps uphold associational freedoms and ensures that cultural groups have continuity in their practices.

This section outlined two liberal rationales that enable members of a cultural group to secure their culture themselves. The first is resolving collective action in the provision of public goods. The second is upholding associational freedoms. In both these cases the cost of securing their culture is borne by members themselves, and the rationales for doing so are compatible with liberalism.

IV. Promoting a Complex Common Culture

Liberals can support securing the culture of groups through subsidies and transfers from non-members. Apart from the direct benefit to members, this support is based on the indirect benefit that accrues to non-members from a more complex common culture.78 Members of a political community share a common political and economic culture. In addition, cultures interact with each other, making it hard to know where one culture begins and another ends. By maintaining a minority culture, members of a

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78 My argument here is analogous to Dworkin's (1986) for funding the arts. He argues that funding "high" culture enriches the cultural structure, generally. Similarly funding a particular cultural group can enrich everyone's culture. Also see Joseph Raz's endorsement of multiculturalism as requiring a common culture in "Multiculturalism: A Liberal Perspective" (1994). Since Raz is responding to critiques of multiculturalism that view it as undermining social unity he seeks to show how multiculturalism requires it.
political community can help enrich their common cultural structure and increase the distinct possibilities available to them.

When the state subsidizes a cultural community it not only directly benefits members, but it can also benefit non-members. It helps provide members with the particular aspects of their culture – language, novels, art, customs – they may have not been able to afford otherwise. The benefit to members is immediate. The value of their culture to them provides them with a political rationale to seek support for their culture. But this same rationale – providing particular aspects of a culture - will not apply to non-members as easily. While non-members may also enjoy some aspects of another culture – art, novels, music – they do so in a more limited way. This enjoyment and participation in another culture does not always take place directly through particular aspects of another culture.

Non-members may also indirectly benefit from the cultural practices of a cultural community. While cultural communities may be distinguishable, they are rarely discrete. For example, Tamils and Sinhalese or Blacks and Whites, may be clearly distinguishable as different communities. They may live in different neighborhoods, marry different people, and even speak different languages. But they are rarely marked off by a clear cultural barrier. Often cultural communities within the same political community are a “seamless web.” Even if it is easy to say where one community begins and another ends, it is hard to say where the cultural influences of one community begins and another ends. There are many practices of a particular community that may, over time, come to inform and even become a critical part of the culture of another community. These can range from words and aesthetic forms, to more specific cultural and social practices. It is hard to predict how cultural communities influence each other even as they do so.

Consider a cultural art form like jazz music. While jazz is closely identified with African-American culture in its origin, it has clearly gone beyond it in practice. Jazz is an art form that is performed and enjoyed by Americans from many different cultural traditions, even as it continues to be pre-dominantly African American. Support for jazz by the American State through institutions like the National Endowment for the Arts,

He argues that a common economic and political culture, as well as, civic education in toleration and respect will contribute to a common culture (pp. 187-188).
today is unlikely to be simply about whether to support African American culture. This is because members of many different cultural traditions in the United States directly enjoy and participate in it. While funding for jazz may benefit African Americans disproportionately, the debate about such funding would still be about which set of cultural practices and forms enjoyed by all members of the political community should be supported by the state. In this case both members and non-members would benefit directly from the support extended to particular cultural practices.

However, it would have been impossible to predict ex-ante, how significant a role jazz would come to play in the music enjoyed by whites. The influence of jazz goes beyond the presence of a particular art form that Whites may also value and take pleasure in, to the cultural frame that makes such aesthetic appreciation and values possible. The presence of Black culture has thus contributed (and has the potential to contribute) significantly to the enrichment of White culture. White culture would be less rich today and provide its members with fewer possibilities without the presence of Black culture. This is equally true of the possibilities in most cultural communities, particularly those whose social and political life are closely intertwined like the Tamils and Sinhalese, and the Jews and Arabs. In many cases the cultural tropes and practices of one culture have become so much a part of another, that members no longer even view these practices as belonging to another culture. In this way aspects of one culture can become a part of the structural frame of another.

When non-members do not directly enjoy the practices of another culture, these practices and the cultural values they represent can still indirectly benefit non-members by enriching their culture. This enrichment will provide non-members with greater possibilities within their own culture that are neither predictable nor measurable, but still tangible. Non-members pay for a cultural benefit that will accrue to them, albeit indirectly. While there are serious information gaps about the precise extent of the benefit that accrues to non-members from funding another cultural group, these gaps

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79 "(There is a) distinction between two consequences our culture has for us. It provides the particular paintings performances, and novels, designs, sports and thrillers that we value and take delight in; but it also provides the structural frame that makes aesthetic values of that sort possible, that makes them values for us." Dworkin (1986), "Can a Liberal State Support Art?", p. 229.
need not lead to the denial of such funding. An argument similar to the public goods one - where the state helps to address market failures - can be used to justify state intervention and to secure the cultural practices of a cultural group with the resources of non-members. Here a complex and rich common culture is viewed as a good that benefits all by enriching cultures and providing greater possibilities for everyone, not just for members of the culture being subsidized.

This rationale for supporting cultural groups however depends on the benefits that accrue to non-members. Members do not have a right to obtain state support for their culture. The state may, depending on the availability of resources, choose to subsidize some cultures and not others. While liberals can justify subsidies for cultural groups on this basis, they do not require it.

V. Conclusion: Expensive Culture

In this chapter I discussed political moral rationales for granting rights to cultural groups. First liberals can target members of cultural groups to ensure socio-economic equality, rectify past injustice and counter discrimination. While these measures use membership in a cultural community as a proxy for socio-economic disadvantage, they do not directly secure culture. Second liberals can support measures that enable groups to secure their culture, themselves. These measures, based on freedom of association, help cultural minorities resolve collective action problems and pursue cultural practices. While these measures directly secure the culture of a group, the cost is borne entirely by members. Third liberals can support a minority culture as a means of promoting cultural diversity. They do so on the basis that a more complex common culture promotes individual well-being for everyone. While the cost of promoting a particular culture is borne by non-members, the benefits of a complex common culture also accrue to them. Addressing cultural claims that go beyond this entails subsidizing expensive culture because the cost of maintaining it leads to socio-economic inequality for members.

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80 This can sometimes have a perverse effect on a community’s acknowledgment of cultural borrowing. The very ubiquity of another culture’s practice or values in its own, can also lead a community to deny that it was borrowed, altogether.

81 There has been considerable confusion over the justification of restrictions that apply only to minority cultural groups. The fact that such restrictions exist does not imply giving moral priority to a group over an individual.
Liberal theorists of cultural groups invariably refer to three types of groups – religious groups, ethnic groups and national groups. The next two chapters deal with the liberal limits of supporting minority cultures. Chapter IV deals with whether liberals should subsidize expensive religion, while Chapter V deals with whether liberals should subsidize the expensive culture of ethnic and national groups.
Chapter IV

Religion, Equality and Cultural Rights

Liberal theorists of cultural rights describe religious groups as one example of cultural pluralism.\textsuperscript{82} To accommodate religious groups in a political community, they typically endorse exemptions for the practices of religious groups when these practices violate uniform rules and regulations. However, Liberals also invariably reject subsidies for expensive religious practices even when pursuing these practices can lead to economic inequality for believers who practice them. While support for exemptions and opposition to subsidies for religious practices is not an uncontroversial position in liberalism, it is still a consistent one. This chapter outlines a political liberal argument for why a person's religious practice is only eligible for exemptions and not for subsidies by distinguishing it from the dismissal of exemptions by some liberal egalitarians and endorsement of subsidies by some radical egalitarians.

Liberals agree that religion as a non-negotiable comprehensive moral doctrine has a priority in a person's life.\textsuperscript{83} This leads liberals to require the state extend greater accommodation to religious practices in a way that it need not do so for other types of practices. But liberals disagree about how to institutionally accommodate religious practices in a political community. Some liberal egalitarians argue that religious practices can only be accommodated through the basic liberties.\textsuperscript{84} They argue that granting exemptions from uniform rules and regulations for religious practices violates liberal neutrality, leads to state interference with religion, and places an unfair burden on non-believers. Political liberals argue liberals should not only support the basic liberties as a means of accommodating religious practices, but should also support exemptions for religious practices that conflict with seemingly uniform rules.\textsuperscript{85} However, they reject

\textsuperscript{82} Kymlicka (1995) pp 30-31, p. 113-115, pp. 176-181; Amy Gutmann (1993); Brahm-Levey (1997); Levey (1997). However, all three confuse religion and culture, assigning to the latter the moral significance of the former.
\textsuperscript{83} John Rawls, 1993, Chapter VIII.
\textsuperscript{84} The position of these liberal egalitarians is derived from Barry (2001), Ira C. Lupu (1989&1991). Clearly the term liberal egalitarian is used here in a limited way, since there are many liberal egalitarians who do support exemptions as well.
\textsuperscript{85} The political liberal position that I defend is drawn from Rawls (1993), Joshua Cohen (1992) and Michael McConnell (1992).
subsidies for religion because of practical moral hazard problems and the unfair burden granting such subsidies can impose on non-believers. Radical egalitarians argue liberals should not only support the basic liberties and religious exemptions, but should also subsidize expensive religious practices.86

These egalitarian liberals and radical egalitarians differ about the stability of their respective positions. However, they concur that the political liberal position is unstable. They argue the very reasons that lead political liberals to support religious exemptions should also lead them to support religious subsidies. Of course, egalitarian liberals believe this is a reason to oppose exemptions, while radical egalitarians believe this is a reason to support subsidies. I argue instead that the same reasons that lead to support for religious exemptions can also lead to opposition to religious subsidies. First political liberals support religious exemptions not only because they recognize the stringency of the burden imposed on believers by uniform rules that prohibit their religious practices, but also because of the limited state interference required to institutionalize exemptions and the minimal burden these exemptions impose on others. Second the very reason that motivates the case for religious exemptions - the non-negotiability of religion — also motivates the case against subsidizing it — wariness that there may simply be no limits to religious expenses because religion is not negotiable. Moreover, while the radical egalitarian and the political liberal differ, in principle, they do not differ, in practice. For both the most practical accommodation of religious practices in a liberal society is to exempt religious practices, but not to subsidize them. While radical egalitarians view this as a compromise of practicality with morality, political liberals do not.

Finally, I argue that recognizing religious exemptions because they are fundamental moral obligations does not provide an incentive to cultural groups that are not also religious ones, to make political claims on the basis that their culture is a non-negotiable moral commitment. Persons who view their culture in this way are at least, free to pursue their cultural commitments through the basic liberties, and, at most, eligible for exemptions from uniform rules and regulations. These are not the kind of political measures that most cultural groups seek from the liberal state.

86 The radical egalitarian argument is drawn from G. A. Cohen (1989); and Richard Arneson (1989). The argument of a liberal multiculturalist who endorses subsidies for expensive religion would be
This chapter is organized as follows. Part II outlines the liberal normative rationale from religious freedom for the basic liberties. Part III argues this normative rationale also leads to liberal support for exempting religious practices from uniform rules. Part IV argues the same normative rationale for religious freedom does not lead to liberal support for subsidizing expensive religious practices. Part V concludes.

II. Religious Freedom and the Basic Liberties

Liberals believe that all citizens are moral persons. For Rawls this means that they have the moral capacity to form, revise and pursue a conception of the good. A person's conception of the good can be personal, i.e., particular to her or him, or it can be derived from a comprehensive moral doctrine. An individual can have personal loyalties, attachments and desires that she wishes to fulfill. However, these personal ends may change over time. Changes may be due to her concluding, after a rational appraisal of her loyalties, attachments and desires that they ought to be changed. They do not make the best sense to her as she is living her life now. Changes may also be simply due to happenstance - when she meets new people and acquires new loyalties, or discovers other artistic or vocational ends that enable her to live a more fulfilling life. However she acquires her ends, whether through birth, social circumstances, rationally evaluating them, imagining them, or simply bumping into them, they become hers.

A conception of the good need not always be idiosyncratic or purely personal. It can also be derived from a shared religious, philosophical or moral view of the world. Rawls calls these comprehensive moral doctrines. A comprehensive moral doctrine covers the major religious, philosophical and moral aspects of human life. It organizes and characterizes recognized values so that they are compatible with one another. Comprehensive moral doctrines differ from each other by giving primacy to a particular set of values, and working out criteria for balancing values when they conflict. The commonest example of a comprehensive moral doctrine is religion, though such doctrines

\footnote{Rawls (1993), pp. 58-66.}
are not only religious. Moral philosophies such as utilitarianism and nationalism can also qualify as comprehensive moral doctrines.

Now comprehensive moral doctrines are not simply philosophical beliefs that individuals generally have about the world. Rather, individuals affirm their comprehensive moral doctrines and live their personal lives in accordance with them. The extent to which different moral doctrines articulate a framework for the lives of their adherents can differ. Some moral doctrines are fully comprehensive. They cover all recognized values and virtues within one precisely articulated system. Orthodox versions of Judaism, Islam or Hinduism are examples of this. Orthodox expressions of these religions articulate a way of being a person that covers most aspects of a person’s life. Other moral doctrines are partially comprehensive. They articulate virtues and values that affect some aspects of a person’s life. Non-orthodox versions of Judaism, Islam and Hinduism provide examples of this. While moral doctrines may be fully or partially comprehensive, they are non-negotiable. The aspects of a person’s life that are governed by a comprehensive moral doctrine that a person affirms are not open to negotiation for greater material goods or social benefits. For example, for an Orthodox Jew, wearing the yarmulke and observing the Sabbath are not dependent on whether or not it is convenient to do so. Doing so is required by his belief in his religion, whether it lowers his income or exposes him to anti-Semitism.

The political liberal recognition and respect for the non-negotiability of a comprehensive moral doctrine stems from two claims. The first is the fact of moral pluralism, i.e., that under conditions of freedom “to form, to revise and rationally to pursue a conception of the good,” reasonable persons cannot only differ, but even diverge, over the truth of comprehensive moral doctrines. The second is the idea that the obligations entailed in religious practices are not chosen by the believer but are

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89 Rawls (1993), p. 152 fn
90 The fact that religious adherents, such as Orthodox Jews, often fulfill these fundamental obligations at great personal peril suggests the limit of an economistic approach to religious belief and indicates why liberals are open to accommodating them. For a useful discussion of an economistic approach to religious belief see Russell Hardin (1997).
91 The incommensurability of moral doctrines in a political community is a central theme of liberal political theorising. For political liberal discussions of this see Rawls (1993); Charles Larmore (1987); Josh Cohen (1992); Steven Lukes (1991); Brian Barry (1995).
imposed by the content of the beliefs. 92 These two claims lead to the liberal justification of religious toleration. The basic liberties, particularly freedom of conscience, expression and association, are then defended on the view that religion or the belief in a non-negotiable comprehensive moral doctrine are central aspects of a person’s life that ought not to be made vulnerable to the whims of a transient majority.

First, consider the fact of moral pluralism. This claim is both empirical and normative. Empirically it is based on the absence of a historical tendency towards convergence in the beliefs of different religions, including disbelief in god altogether, under conditions of freedom. This lack of convergence also applies to secular moral doctrines. The absence of such a convergence suggests that the only means for achieving it, i.e., for eliminating moral pluralism in a political community, is the denial of freedom altogether. Such a denial has historically led to intense and often violent conflict confirming that persons view their religious doctrines as non-negotiable, rather than eliminating moral pluralism. The history of religious wars in the West and the continued presence of religious conflict around the world suggest that any attempt to enforce a singular morality runs the risk of either leading to the collapse of the political order or the loss of human freedom (or both).

Normatively the recognition of moral pluralism is based on the idea that rational and reasonable people can differ about the truth of a comprehensive moral doctrine. If there is no politically reasonable basis to rule out some religious views and not others as wrong, the only plausible strategy for accommodating religious pluralism in a polity is religious toleration. The basic liberties, particularly freedom of religion and conscience emerge from this recognition of the fact of moral pluralism. Two reasonable persons can have competing comprehensive moral doctrines that are irreconcilable through the exercise of practical reason. They can both simultaneously have good reasons for their belief, while conceding that each person’s reasons for her belief cannot rationally dissuade the other from continuing to believe in hers. This enables them to reconcile the depth of their religious convictions with tolerating that of the others.

The second is the idea that the obligations of fulfilling religious practices are not chosen by the believer. They are instead imposed by the content of the beliefs.\textsuperscript{93} Once a Muslim believes that Allah is the only true god, he no longer chooses to follow the restrictions on diet and the requirements of worship in the Koran. These practices are imposed on him by his belief that his moral doctrine is true.\textsuperscript{94} To adjust his practices he has to adjust his belief. And, given the fact of moral pluralism, there is no argument that a Muslim cannot reasonably reject that can convince him of the falsity of his belief.

Religious toleration neither requires that a person be skeptical about her own belief nor indifferent towards others beliefs. Indeed, the very fact that each believes she has good reasons for endorsing her own belief strengthens rather than weakens the case for religious toleration. Neither expects the other to change her belief, \textit{simpliciter}, but to do so for good reasons. This leads to the liberal justification of religious toleration. The basic liberties, particularly freedom of conscience, expression and association, are then defended on the view that religion or the belief in a non-negotiable comprehensive moral doctrine is a central aspect of a person's life that ought not to be made vulnerable to the whims of a transient majority. Freedom of conscience and worship emerge from these two considerations.

Liberals support the basic liberties because they provide an institutional scheme through which a person can form, revise and pursue her conception of the good, without predetermining it. While a person has a particular conception of the good that she pursues, at any given moment, the basic liberties do not predetermine what this conception of the good is or ought to be. Instituting the basic liberties leaves open the

\textsuperscript{93} See Josh Cohen (1996).

\textsuperscript{94} "(the) claim that the alternatives of deliberative reticence (not saying what one really believes) and insincerity (affirming what one doesn’t believe) must always exist as possibilities in order to determine whether a belief is really sincere, seems to me not clear enough. The \textit{possibility} must surely be more than simply an abstract logical option; it must relate to an act that could, within a specific religious context, be properly performed. But if that is so, then the Christian act of “bearing witness in public” would have to be identified as “sincere but inauthentic,” because for the Christian it excludes the possibility of deliberate reticence or insincerity. ....(we would have to describe) Luther’s declaration (I am a prisoner in conscience to the Word of God. I cannot retract and will not retract. To go against the conscience is neither safe nor right. God help me. Amen.”) as sincere but inauthentic. This doesn’t seem correct, however. Everyone is familiar with situations in which it seems to be morally impossible not to say what one believes. One feels \textit{compelled} to speak out in the only way possible. Should the absence of the possibility of reticence in such situations be taken to mean that the belief is inauthentic? If that is so, then “authenticity” here seems to be no more than a way of valorizing the \textit{absence of moral passion}. The distinction between “sincere” and “authentic” belief thus reflects a particular liberal inclination."
possibility that an individual may pursue, revise or even abandon her particular conception of the good. Nevertheless, the importance of a personal conception of the good to her that is idiosyncratic or derived from a comprehensive moral doctrine is recognized in the priority that liberals grant the basic liberties. The priority of the basic liberties in a scheme of justice such as Rawls' reflects the political liberal idea that there is no "correct" pedigree of a conception of the good in a person's life that either qualifies or disqualifies her from pursuing it.\textsuperscript{95} It also reflects the political liberal idea that comprehensive moral doctrines impose fundamental obligations on individuals who affirm them. Political liberals recognize these obligations and their support for the priority of the basic liberties rests on the non-negotiability of a person's comprehensive moral doctrine and the stringency of the demands that it imposes on its adherents.

Finally, it is important not to confuse the non-negotiability of a moral doctrine with non-negotiability, generally. Individuals can be illiberal in their personal lives even while they affirm and support public institutions that are liberal, i.e., they are political liberals. Orthodox Jews may have stringent regulations and rules in their religious life that limits their choices professionally, personally and socially. Their interpretation of Judaism may keep them from interacting with Jews and gentiles who do not share their Orthodox faith. Still, they may support political equality for Palestinians.\textsuperscript{96} On the other hand nationalist secular Jews may not have stringent rules about their professional, personal and social lives, but may reject political equality for Palestinians. Non-negotiability here is not a personal or a social characteristic, but a doctrinal moral one. Thus religion is modelled as a non-negotiable comprehensive moral doctrine in liberal theory.

Liberal egalitarians, political liberals and radical egalitarians all agree that religious toleration requires the basic liberties. However, some liberal egalitarians refuse to take the next step and support exemptions for religious practices, which political liberals and radical egalitarians do.

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Talal Asad (1996). Also see Asad (1993).

\textsuperscript{95} The contrast here is with the liberal autonomy view for which there is. For autonomy liberals it is only ends that have been formed autonomously that ought to qualify for state recognition and support. See Brian Barry's discussion of liberal autonomy (1996: pp. 128-133).
III. Religious Freedom and Exemptions

Political liberals argue that if religious toleration is required because of the depth of a person’s religious commitments, religious practices that clash with seemingly neutral rules in society should also be exempted. Religious obligations are not self-imposed but are fixed by the content of the faith. For example, Native Americans who ingest peyote for sacramental purposes, and Orthodox Jews who wear the yarmulke in the military have no choice. Neutral rules, such as the requirement to wear standard headwear and the prohibition on hallucinogens, can severely burden religious adherents like Orthodox Jews and Native Americans. Even if these rules are not designed with a view to discriminating against particular religious beliefs or practices, they are unfair because they can severely burden members of a religious group.

For a believer, a seemingly neutral rule that disrupts her pursuit of a religious practice is burdensome because she has to choose between fulfilling her religious conscience or violating the law. She may choose to engage in the particular religious practice, in which case she runs the risk of punishment at the hands of the state authorities. Or she may choose not to, in which case, she violates her religious conscience. Given the importance of religion in a person’s life liberals believe exemptions should be granted because a person should not be compelled to face such a stark choice. Apart from political moral considerations, granting exemptions also serves an important practical political purpose. It enables regulations with an important public purpose to be passed by circumventing political opposition from religious groups. Without the provision of exemptions, the state would have to choose between violating the religious conscience of believers or forgoing regulations that further the public good. Thus political liberals argue the same rationale that liberals use to justify religious freedom, that the central importance of religion in a person’s life should protect it from the transient preferences of a majority, also justifies exemptions from uniform rules for religious practices.

There are two main objections to providing exemptions for religious practices from uniform rules. The first objection is that determining and monitoring exemptions can both offend religious groups who are denied them and have a chilling effect on religious expression. The second objection is that granting exemptions can impose an unfair burden on non-believers. The first objection is based on the adverse effects granting exemptions can have on religious groups due to the process of securing exemptions and subsequently monitoring a religious group’s use of them. As citizens of the same political community non-believers cannot but get involved through the liberal state not only in evaluating the sincerity of a believer’s belief and the centrality of her practice in it, but also her actual exercise of the exemption. The second objection is related to the cost granting such exemptions will invariably impose on non-believers, both when the state administers them and religious groups exercise them.


Granting exemptions entails determining the extent of the burden imposed on religious practices by a uniform rule or regulation. This requires distinctions that turn on the sincerity of a person’s belief and the centrality of a religious practice. Making these distinctions runs the risk of offending religious believers. Believers become offended and alienated from the polity, if the state grants exemptions to some religions and not to theirs. They feel their religious beliefs are ignored or the sincerity of their beliefs are challenged.

While this may not make them disbelieve, it will further alienate them from the polity. In denying exemptions to particular religious groups instead of others, the liberal state is not only enacting a uniform rule that disregards the practices of a religious group, but it is also implicitly justifying it. Moreover, the liberal state is more likely to recognize as religions, those groups that are closer to the mainstream. This weakens the argument for granting exemptions in the first place. Since the groups that need the recognition and protection of the state from adverse rules and regulations most, are least likely to benefit from exemptions.

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98 Both objections are found in Lupu (1991). There is a third objection - which is that liberals may reject exemptions simply because they prefer a less regulatory state.
Even if the sincerity of a religious group’s practice can be unambiguously determined, monitoring its subsequent exercise can have a chilling effect on religion. To ensure that persons are not making frivolous claims, religious practices may be monitored when believers ask for exemptions. Consider the case of granting exemptions that enable the Native American sacramental use of peyote. To grant the exemption to Native American religious believers and not simply to recreational users, the state will have to monitor the production and use of peyote. The church may be required to register its members with a government agency in order to get the licences necessary for obtaining peyote. In monitoring the use of peyote the state will be monitoring members of the Native American church.

Routine administrative procedures, such as these, can have a "chilling" effect on religious freedom. Religious groups that have suffered discrimination in the past, and religious groups viewed as strange or bizarre by mainstream society are the most likely to be wary of such monitoring. These are precisely the kinds of groups whose religious practices the state usually fails to take into account when it enacts uniform rules and regulations. The religious groups most in need of exemptions are least likely to want the state monitoring that comes with claiming it.

The possibility of offending believers and having a chilling effect on religious practices are important concerns. Nevertheless, most religious groups prefer the risk of being offended or monitored when they must justify their claims for exemptions to non-believing members of the polity to the alternative - a complete rejection of exemptions that will increase rather than diminish the prospect of intervention by the state when it prosecutes violations of civil or criminal laws. They prefer to live in a society that sometimes mistakenly fails to grant exemptions to believers who qualify for them, to one which refuses to grant exemptions to all believers.99

In the former society, the prospect of rectifying the inequality in the future exists, but in the latter it does not. Moreover, in a society which fails to grant exemptions for religious practices all religious practices are not equally burdened, but invariably those of the minority and the politically powerless. Laws that severely burden the religion of the
majority or politically powerful religious groups will not even be thought of, let alone be drafted, proposed for legislation, or passed by a legislature. Religious minorities most vulnerable to the adverse effects of determining and monitoring religious exemptions are also most likely to support them. This weakens the objection that determining exemptions can offend believers and chill religion. It also leads to the second objection to granting exemptions - the cost it imposes on non-believers.

**III.b. Exemptions impose a burden on others.** Exempting religious practices from uniform rules imposes burdens on non-members. First, there is the added cost of determining and monitoring exemptions. While doing so can lead to problems for believers, it can also impose costs on non-members. A state policy of exemptions will require considerably more cost in terms of both legislation and administration that a state policy that simply rejects exemptions. Legislators will have to take careful note of the potential impact their rules and regulations will impose on non-believers before they legislate. The courts will have to provide recourse to religious minorities who feel they have not been treated fairly by the legislature. Even when all parties - the religious groups seeking exemptions, the legislature and the courts - have agreed on an appropriate exemption, it will have to be administered at the expense of the state to ensure that it does not pose a more substantial threat to society. Non-believers will invariably share this cost of administering religious exemptions.

The second is the direct cost imposed on non-members when members exercise their right to religious exemptions. For example when the state exempts Native Americans from uniform anti-drug laws to ingest peyote, it can counter the state’s attempt to discourage drug use. Instead of sending a clear and unified message that drugs are bad, the state sends an ambiguous message when it grants exemptions that implicitly endorse the use of hallucinogens. The public purpose of such a law against drugs are then weakened, if not undermined, imposing costs on non-believers. The cost imposed on non-believers can be even more direct. When the state exempts religious believers who refuse to work on Saturdays from prohibitions on social welfare a direct cost is

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99 McConnell (1992) argues that religious groups invariably prefer a policy of exemptions from “neutral” rules to one which rejects this on the basis that it leads to state entanglement with religion. They view the
inevitably imposed on other citizens.\textsuperscript{100} Similarly, when the state requires employers to reasonably accommodate the religious practices of believers, the burden of such accommodation is imposed on the employers or other employees. In this way religious exemptions designed to accommodate the religious practices of religious groups that violate neutral rules can impose a cost on non-believers.

Political liberals concede that such a cost indeed exists. Still, they argue that political morality requires that this cost be incurred by the state and thus indirectly by non-believers. They argue that in the case of religious exemptions the burden should be on the state. Exemptions are required not simply because of the religious practices of the believers, but because the new rules and regulations designed by the state clash with them. Thus the onus should be on the state and non-believers to ensure that religious minorities are not adversely affected when new rules and regulations are designed. If the state cannot but impinge on the religious practices of a minority then it ought to accommodate these practices by granting exemptions.

This argument does not justify exemptions from uniform rules in society for all religious practices. Some rules, such as preventing torture and physical abuse, providing healthcare and education for children, ought to be enforced uniformly. Others such as equality of opportunity in hiring and promotion or freedom of expression within the religious institution may not be enforced. The question of when religious practices require exemptions is not clear. This inevitably entails debate and deliberation about the centrality of a religious practice, the extent of the disadvantage, and the damage to the public purposes of the law when exemptions are granted. There is no simple rule that can clarify when such exemptions should be granted.\textsuperscript{101}

Thus political liberals support exemptions, while some liberal egalitarians do not. The choice of whether or not to grant exemptions is ultimately a political moral question about balancing the competing interests of promoting a public purpose with a law and the vital religious practices of a religious group. In resolving this question, some liberal egalitarians choose to draw the bright line at the basic liberties, while political liberals

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\textsuperscript{101} For a discussion of criteria for exempting religious associations from anti-discrimination laws see Stuart White (1998).
choose to do so at exemptions. Political liberals support exemptions because they believe that the same rationale that led liberals to support the basic liberties - a person’s comprehensive moral doctrine should not be subject to the whims of a transient majority - ought to also lead them to support exemptions.

But why should liberals stop at granting exemptions? Radical egalitarians argue that political liberal support for exemptions, alone, appears to be an unstable position. They argue that for all the reasons liberals grant exemptions to religious practices from uniform rules that burden believers - religion has a central role in a persons life, it is unchosen and non-negotiable - liberals should also grant subsidies for religious practices that cost more. Next, I outline the radical egalitarian argument for subsidizing expensive religion and the political liberal objection to it.

IV. Subsidizing Expensive Religion

The intuitive argument for subsidizing expensive religion is that if liberals believe unchosen circumstances, such as gender, race, natural talents, and social class, should not affect the distribution of primary goods or resources in a liberal society, why should a person’s religious practices derived from her religious convictions do so.\(^{102}\) Liberals ought to subsidize expensive religious practices for the same reasons they grant exemptions - religious practices are unchosen, i.e., they are fixed by the content of the convictions,\(^{103}\) and the fact of reasonable moral pluralism,\(^{104}\) i.e., it is not possible to rationally disprove the truth of a person’s religion. Subsidizing a person’s expensive religious practices is then required by the liberal commitment to individual equality. The political liberal rejection of subsidies for expensive religion is ultimately a practical defensive one. Political liberals have no knockdown philosophical argument that can convince radical egalitarians about the moral desirability of rejecting subsidies for religion. They can only describe a series of practical political considerations, some more convincing than others.

\(^{102}\) A notion of religious freedom as pre-political, either based on natural rights as in the case of Locke or based on libertarian combination of original ownership and freedom, is not vulnerable to this line of criticism.
\(^{103}\) Josh Cohen, 1996, p. 34
\(^{104}\) Josh Cohen, 1992.
Political liberals believe the morally acceptable allocation of religious rights protects a person against the expensive religious practices of others, at the cost of the benefit of subsidies for her own religious practices if they turn out to be expensive.\textsuperscript{105} Radical egalitarians challenge the morality, though not the practicality of this resolution of religious pluralism and individual equality.\textsuperscript{106} They concede that the liberal state is faced with either a moral hazard problem or the difficulty of distinguishing true believers from false ones, and religious practices that are central to a religion from those that are not. Ignoring the moral hazard imposes a huge cost on those who are non-believers, while addressing it offends believers and violates their privacy. Under these circumstances radical egalitarians can do no better than political liberals in practice. For all practical purposes radical egalitarians are indistinguishable from political liberals in their approach to religious toleration.

\textit{Expensive Religion.} What is expensive religion? A religious practice can be burdensome for different reasons. It can be burdensome because an individual dislikes a practice for aesthetic or other reasons. The practice - say animal sacrifice - is messy or she does not like the smell of blood. Short of changing the practice, which a true believer will not seek, or changing her sense of smell, which is physically impossible, there is little the state can do to reduce the burden in this case. A religious practice can also be burdensome because that is precisely what it is intended to be. Fasting and other forms of self-deprivation, making a pilgrimage on foot and confessing one’s sins, are religious obligations where the burden itself is intrinsic to the religious practice. In these cases, alleviating the burden by providing food to those who are fasting or transportation for the pilgrims undermines the very purpose of the religious practice. A true believer will not seek to have the burden alleviated and nor should the state try to do so. Next, a religious practice can be burdensome because uniform rules in society interfere with it. In this case a true believer claims exemptions from these rules. Finally, a religious practice can be burdensome because it is expensive - monuments cost a lot of money. Here the

\textsuperscript{105} The argument in this section is drawn from T. M. Scanlon (1975; 1982; 1986).
\textsuperscript{106} The radical egalitarian argument is drawn from G. A. Cohen (1989) and Arneson (1989).
burdensome nature of the practice is not intrinsic to it.\textsuperscript{107} The liberal commitment to individual equality should lead to state support to alleviate the burden imposed on a believer due to expensive religious practices.

The argument for subsidies then parallels the argument for exemptions. If liberals support religious freedom and the basic liberties because of the depth of a person’s religious commitments, they should also exempt religious practices that violate seemingly neutral rules in society. Similarly, if liberals support exemptions because of the burdens they impose on religious practices, they should also subsidize expensive religious practices. Here the expense of the practices, not the practices themselves, lead to unfair burdens on members of religious groups. For a religious believer, the burden caused by the higher expense of a religious practice can sometimes be as disadvantageous as that caused by a neutral rule that disrupts it. A member of a religious group with an expensive religious practice may have to choose between fulfilling her religious conscience or feeding her family. Members of other religious groups with relatively inexpensive practices will not face this same stark choice. They can have their religious practice and feed their family. Given the importance of religion in a person’s life, radical egalitarians argue the liberal commitment to equality requires subsidizing expensive religious practices.

There are four objections to the argument in favor of subsidizing expensive religion. The first is that true believers choose their religion and thus their expensive religious practices do not qualify for subsidies. Second subsidizing expensive religion violates liberal neutrality. Third, subsidizing expensive religion leads to a moral hazard problem. When the liberal state overcomes this moral hazard problem by monitoring religious practices, it either offends true believers, or violates privacy, or has a chilling effect on religion. The fourth objection is that it is unfair to subject some members of a political community to the burdensome demands of others. The same rationale that leads political liberals to support exemptions for religious practices - religion is unchosen and exempting them does not violate neutrality - leads them to reject the first and second objections to subsidizing religion. However they endorse the third and fourth ones

\textsuperscript{107} G. A. Cohen (1989) accommodates Scanlon’s objection to subsidizing religion by making this distinction between religious burdens that are intrinsic to a religion and those which are not.
because they argue that while exemptions can also offend believers, chill religion, and burden non-believers, subsidies do so to a far greater extent. Political liberals distinguish between the state accommodating religious practices when the state, itself, enacts rules that violate them, and the state assisting religious communities fulfill their religious practices, irrespective of whether these practices are adversely affected by state policy. This is a distinction that radical egalitarians do not make.

**IV.a. Religion is Chosen.** The first objection to subsidizing expensive religion is that religion is chosen. Liberals believe that individuals have the freedom "to form, revise and pursue" their conceptions of the good. They view a person’s religion or comprehensive moral doctrine as a pre-eminent expression of individual autonomy. Religion is a "higher order" interest, one that individuals do not wish to trade-off for any other. The priority that liberal theorists like Rawls grant the basic liberties is based on the importance of individual freedom and its expression through comprehensive moral doctrines like religion. Viewing religion as unchosen, in order to subsidize it, undermines the very moral basis for its priority in liberalism. If religion is indeed unchosen then liberals ought not to provide it with the kind of priority that has been traditionally attached to it. Religion is either chosen, in which case it is not eligible for subsidies. Or it is unchosen in which case it is eligible for subsidies. The argument for subsidizing expensive religion then is not that all expensive religion should be subsidized but only that of social believers, i.e., those who have religious practices as a result of their social situation, such as being born within a particular religious tradition. However true believers, i.e., those who have come to view their own tradition as true or chosen another one because they believe that to be true, ought not to be subsidized.

This objection to subsidizing expensive religious practices has a mistaken view of the nature of choice in religious belief. Subsidizing social believers is not the same as subsidizing religion. Social belief here refers simply to the fact that some persons pursue religious practices merely because others around them do, or because they were born into particular religious traditions. Religious practices for them are not fundamental moral obligations but fulfill a social functional role. It is more like a social means in that it provides the basis for social and economic opportunities, or a context of choice in that it
provides a framework of meaning for organizing a person’s life. Here a person’s life is not organized around her religious belief, but her religion helps organize a person’s life. This suggests that rather than subsidize expensive religious practices, the liberal state should help an individual adjust to a different set of practices that cost less. These can either be other religious practices or even simply social ones that perform the same functional role. The basic idea here is that a social believer’s “faith” can be bought because religion for him is a social means and not a moral end. But in this case what is being subsidized is not religion, but a person’s social practices. To reject subsidies for true believers but not for social believers is to reject subsidizes for expensive religion altogether.

Rejecting subsidies for a true believer is also based on a mistaken view of the role of religion in a true believer’s life. From her point of view, she believes in a particular religion because it is true, not simply because she chooses to believe in it. So once a true believer believes her faith to be true, she has no choice. Religious choice here is not voluntary in the way the decision to gamble while aware of the risk involved is. Just because a true believer chooses a religion because she believes it to be true, does not mean that she can also choose not to believe it because it is expensive. If she did, she would not be a true believer to begin with. To do so implies that she is not treating her religion as a non-negotiable fundamental moral obligation. Rather she is treating religion as if it were a negotiable material good. Whichever way true believers come upon their belief, whether by examining and evaluating many religions and then picking one, or by the happenstance of birth, or the chance encounter with an entirely unknown faith, they now experience their religion as unchosen. Thus the objection that liberals should not subsidize religion because it is chosen does not hold. This leads to the next objection that religious subsidies violate neutrality.

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109 Arneson’s example of the Amish person who requires state support in learning to satisfy ordinary secular needs because he has lost his faith and moved to the city is not making a claim for religious subsidies, but for social ones. While Arneson uses this example to critique Scanlon’s opposition to religious subsidies and endorse an equality of (opportunity for) welfare approach to distributive justice, this is not an example of religious subsidies. Arneson (1989), p. 80-81.
110 And provided that a person is not a compulsive gambler. Presumably one could be a compulsive gambler and still be aware of the risk involved in gambling.
111 Though if a religion is very costly and burdensome a person might think it is not the true religion.
IV.b. Violates Neutrality. The second objection is that subsidizing expensive religion violates the liberal commitment to neutrality between different comprehensive moral doctrines. By subsidizing some religions and not others, liberals support some moral doctrines over others. This objection has a mistaken view about the political liberal commitment to neutrality.\textsuperscript{112} Political liberals support neutrality of aim, i.e., all citizens must have an equal opportunity to advance a permissible moral doctrine that they affirm, and the state must not intentionally support one moral doctrine over another or provide greater assistance to those who favor it.\textsuperscript{113} They do not support neutrality of effect because it is impracticable. This objection assumes rather than argues that neutrality entails the rejection of subsidies, i.e., it assumes that a particular institutional solution is required by neutrality without working out which one is.

Political liberals locate support for the basic structure of a society - the political and social institutions - in a diversity of reasonable moral doctrines. They argue that a defense of a political order that is neither morally derived from, nor politically dependent on, a particular moral doctrine is more stable than one that is. It is more stable because it provides broader support when it enables persons to support a political order from within their distinctive moral doctrines. To the extent that political liberalism does not draw on a single moral doctrine it can be said to be neutral between reasonable conceptions of the good. For example, political liberals do not seek to judge or reject moral doctrines simply because they do not emphasize the liberal value of autonomy in one's personal life. Many religious doctrines and even philosophical ones that are compatible with a just liberal society do not advocate individual autonomy in this way. Because the term neutrality can be misleading, Rawls prefers to describe the political liberal position as an overlapping consensus of permissible moral doctrines or as the priority of the right over the good.\textsuperscript{114}

\textsuperscript{112} This discussion of neutrality draws on Rawls (1993), pp. 191-195. and Joseph Raz (1986), "Neutral Political Concern."
\textsuperscript{113} The criteria for permissibility is defined broadly. Permissible doctrines are those that do not advocate political inequality for other citizens.
\textsuperscript{114} Rawls (1993) p. 194.
There are three ways in which neutrality between permissible moral doctrines can be envisaged. The first is for citizens to have an equal opportunity to advance a moral doctrine they freely affirm. Radical egalitarians argue that ensuring those with expensive religious practices have an equal opportunity to advance their moral doctrine requires subsidies. The claim for subsidies made here does not rest on the desire to favor those whose practices are more expensive over others. Rather it simply depends on the extra cost incurred by citizens in advancing a religion with expensive practices. Subsidizing expensive religion does not violate neutrality, defined as an equal opportunity for citizens to advance their conception of the good, but is a way of realizing it.

A second way of envisaging neutrality is that the state refrain from intentionally supporting a particular comprehensive doctrine rather than another or giving greater assistance to those who pursue it. Subsidizing expensive religion may then be construed as violating this notion of neutrality because the state is providing greater assistance to those who adhere to an expensive religion. Radical egalitarians who support subsidies for expensive religion argue that this construal is wrong. The motivation for neutrality here lies in ensuring the state does not favor one particular moral doctrine over another because it is superior or comports better with the ideas of the governing party at a particular moment. This argument for increasing assistance to persons with expensive religious practices is simply based on the higher cost of their practices, not on the superiority of the content of their religion. Provided adherents of an expensive religion make their claim for a greater share of collective resources on the basis of the additional burden they have to bear because of the higher expenses they incur in pursuing their comprehensive doctrine, there is no violation of neutrality.

The third notion of neutrality is that of effect, i.e., the state should refrain from doing anything that makes it more likely that individuals accept a particular conception rather than another, without taking steps to compensate for the effects of policies that do so. But this notion of neutrality is impracticable. Almost every state policy will invariably support some particular conception of the good over another. Consider a situation where the state addresses an increase in the demand for artisans by providing

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support for training centers. If most artisans belong to a particular religious community, the state policy here may indirectly favor this religion if it increases adherents’ access to better paying jobs. Or it may indirectly disfavor this religion if non-members now get training as artisans as well. Either way, neutrality of effect will be violated. If neutrality is interpreted in this way - as effect - no state would be able to implement any social policies. States would be stymied by the impossibility of actually working out how these policies affect different conceptions of the good and then devising other policies to compensate for these effects.

While subsidizing expensive religion may have the effect of advancing a particular conception of the good - a religion that happens to be expensive - than it would otherwise have been, this is not what is intended by the subsidies. The subsidies are simply intended to provide religious adherents with the opportunity to pursue their religion despite the higher cost. Moreover, even on the narrower construal of neutrality, that of effect, adherents of expensive religions can reasonably argue that compensating for the effect of state action that favors one religion over another is not enough. The liberal state should also compensate for the effects of non-state action – the market. Neutrality of effect is either unattainable or fails to provide an adequate objection to subsidizing expensive religion.

The objection to subsidizing expensive religion from neutrality is inadequate in another more fundamental way. It treats the rejection of subsidies as automatically required by neutrality between different religions, rather than as part of the view to be defended. The argument of this chapter all along has been not to assume that neutrality entails a particular institutional mechanism for dealing with religious pluralism, but to ask precisely what institutional mechanism is entailed by it.117

*IV.c. Leads to a Moral Hazard.* The third objection is that subsidizing expensive religion leads to a moral hazard problem. Addressing this, has a chilling effect on religion, violates privacy and offends true believers.

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116 There is an additional proviso that no extra value or status be attached to a religion simply by virtue of its being expensive. The expense must be seen simply as an unchosen burden.
Granting subsidies to religious practices leads to a moral hazard problem. Individuals who are not believers or whose religious practices are not expensive have a strong material incentive to make claims on the state in order to obtain more than their fair share of resources. While granting exemptions to religious practices can also lead to a moral hazard problem, the extent of the problem there is limited. It is hard to claim that special material benefits accrue to Jews who seek to wear yarmulkes while serving in the military or to Native Americans who use peyote for sacramental purposes. While distinguishing true practitioners of Native American religion from the recreational users of peyote who seek to pose as if they were is a challenge, there is ultimately no great incentive for a person to falsely seek exemptions from rules that do not burden her or him to begin with.\textsuperscript{118} But this is clearly not the case with material subsidies for religious practices. Material benefits are all purpose goods that individuals can use to further their individual welfare, however they define it. It is hard to ensure that individuals utilise these resources only for subsidizing expensive religious practices.

One way of circumventing the moral hazard problem may be to monitor religious expenses through religious centers and churches, in the way the liberal state monitors non-profit organizations or private corporations. But this can lead to a chilling effect on religion, when adherents will have to justify their practices and expenses to the state. It also favors one type of religion - organized and publicly expressed religion - over others. Those who have expensive religious practices that are intensely personal or private will not qualify for subsidies. They will have to choose between having their religious freedom violated or spending their own money. Overcoming this concern by monitoring individuals personal lives to ensure that they are indeed spending the money on religion and not personal pleasure will lead to a violation of privacy. And trying to distinguish between persons who seek religious subsidies because they are sincere believers and those who do so fraudulently will invariably offend some true believers. There are diverse religious practices, and diverse settings in which these religious practices are

\textsuperscript{117} The notion that liberalism supports negative freedoms and not positive ones is an example of a rationale that assumes rather than argues the case for granting exemptions and the basic liberties, but rejecting subsidies (Isaiah Berlin, 1969).

\textsuperscript{118} It is hard to imagine that non-Jews will seek to wear a yarmulke in the military. Though it is possible that others may seek to utilise an exemption for non-Jews to seek permission to wear the head dress of their choice.
carried out. It will be difficult, if not impossible, to monitor the proper use of these state subsidies for expensive religious practices without infringing on religious expression.

The above concerns raised about subsidizing expensive religion are not criticisms of general subsidies for all individuals to pursue the religion of their choice. But in this case what is being subsidized is religion, itself, not expensive religion. Subsidizing religion, without examining the extent to which these subsidies are required because of expensive religious practices weakens the radical egalitarian rationale for these very subsidies. Moreover, the same rationale for subsidizing all religion without regard to relative cost also applies to subsidizing non-religious practices. Those persons whose practices are not religious may make claims on the basis that they are. Distinguishing between religious and non-religious practices will lead to the same monitoring problems that existed in distinguishing between less and more expensive religious practices. Ultimately, any attempt to provide subsidies for religion without regard to the extent of the expense incurred by each one, becomes a general subsidy for individuals to pursue their own ends, whatever they are.

Many of these objections raised against subsidizing religion also apply to the case of exemptions. But as I have argued, exemptions provide a more practicable institutional response to the religious burdens experienced by believers. The practical problem of monitoring is far greater in distributing subsidies to religious practices than in providing exemptions. This is because the incentives for utilising these subsidies for non-religious purposes are also greater.

IV.d. Unfair Burden on Others. The third objection is that subsidizing expensive religion can lead to an unfair burden on others. Political liberals believe the morally acceptable allocation of religious rights protects a person against the expensive religious practices of others. They recognize that the cost of this protection for a person is the benefit of subsidies for her own religious practices if they turn out to be expensive. Devising a scheme that protects oneself from other peoples religious requirements is ultimately a practical defensive measure.¹¹⁹

¹¹⁹ Here I follow Scanlon's argument about the value of choice in justifying political and social institutions. (1975); (1982) and particularly (1986) pp. 199-201.
Even when there is no dispute that a religious practice is expensive, the adherent is sincere and the expense imposes a severe burden on her, it is still not clear that the liberal state ought to subsidize religion. One reason for not subsidizing may be simply that doing so leads to the unequal treatment of other cases where such a clear determination of cost of practice and sincerity of belief is not possible. I think this objection - that like cases should be treated alike - is important. I will not focus on this objection because it is a restatement of the previous moral hazard/monitoring objection. Rather, I will object to subsidizing an expensive religious practice more directly. There are two ways this argument against subsidizing expensive religion can proceed. The first is to show how some of the very reasons that lead liberals to accommodate religious freedom through the basic liberties and exemptions also lead to the rejection of subsidies. The objection to subsidizing religious freedom is then derived from the nature of religion and the important role it has in a person’s life. The second is to show more generally how a contractualist idea of political morality justifies protecting persons from others’ burdensome preferences, at the expense of failing to satisfy their own preferences if they turnout to be burdensome.

Recall that the justification of religious freedom derived from the non-negotiability of religion and the unchosen nature of religious practices. Given the fact of reasonable moral pluralism, i.e., that reasonable persons can differ over non-negotiable moral doctrines, political liberals support the basic liberties and exemptions from uniform rules. They believe it is neither rationally possible nor politically necessary to disprove the religious faith of a believer in order to justify liberal political institutions. Even after seeking support from and tolerating a diversity of moral doctrines and religions, it may still turn out that a liberal society, inadvertently or otherwise enacts uniform rules that severely burden individual adherents of particular religions that are compatible with political liberalism. The reasons for doing so may be to further secular purposes such as a common day of rest (Sunday closing laws), military discipline (no yarmulkes in the military) or preventing the use of drugs (ban on peyote). Nevertheless because these measures can severely burden religious adherents political liberals support exemptions.
The exemptions are supported not only because the religious obligations are fundamental moral ones that place stringent requirements on believers, but also because they can be accommodated without undermining the social purposes of these laws and without imposing severe burdens on non-believers. The argument for religious subsidies is based on the cost of the practices themselves derived from the content of the belief. This is unlike the case for exemptions which is based on specific policy measures made by the state, however just or desirable, that are in tension with the practices of religious groups. If the need for subsidies can be blamed on the "market," the need for exemptions can only be blamed on the state that initiates policies that are insensitive to the religious practices of minority groups.

In justifying exemptions from uniform rules, political liberals emphasized the stringency of the burden on believers if the liberal state failed to accommodate them. However, implicit in this argument was the assumption that the liberal state could accommodate these exemptions with minimum burdens on non-believers. If the religious practice is clear, and the centrality of the belief is established, granting exemptions depends on the extent to which doing so will impose a burden on non-believers. The willingness to grant exemptions then does not turn on the unchosen character of the religious practice, alone, but from an assessment of the burdens that accommodating religious practices imposes on non-believers. Emphasizing the unchosen character of religious practices, i.e., that religious practices cannot be simply modified in accordance with economic limitations or abandoned for material benefits is to make non-believers aware of the stringency of religious demands and not to licence the accommodation of religious practices in all cases.

The very non-negotiable character of religion can also make non-believers wary of accommodating expensive religion. If religion is not only non-negotiable, but also expensive, believers will seek large subsidies from the state. If equality requires that the state provide subsidies for expensive religion, a non-believer will be compelled to share the burdensome demands of a believer’s faith that she does not believe in. While the believer will be fulfilling a fundamental moral obligation, the non-believer will simply be

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120 By "otherwise" I do not mean with hostile intent. Presumably that would not be the case in a liberal society. Rather I mean that a liberal society may enact a law because of the social benefits that can be
working harder. For the non-believer subsidizing the believer’s expensive religion is a social imposition on her for the pursuit of another’s ends. Irrespective of how low the cost of the subsidies (and given the non-negotiability of religion, there is no limit to how high this can be) the non-believer now begins to feel like a means for the fulfillment of another’s ends. Non-believers ought to recognize and accommodate the stringency of the religious demands that are imposed on believers, but they can reasonably reject that they be subject to the burdens of a believer’s practices. Subsidizing expensive religion is precisely such a burden.\footnote{121}

This particular application of the liberal concern for not unfairly burdening others with the preferences of some, is derived from Scanlon’s argument in favor of objective, rather than subjective standards of public justice.\footnote{122} When objective standards of justice are used institutions are judged by the degree to which they provide persons with good objective conditions for the development and satisfaction of their preferences. This contrasts with subjective standards where institutions are also judged on the levels of preference satisfaction which actually result from their policies. Scanlon describes three reasons that lead liberals to support objective standards of welfare that invariably entail that persons take greater responsibility for their ends, whatever they are.

(First) we reasonably attach a high value to forming our own preferences under favorable conditions, and one reason for this is our expectation that we will to some extent be steered away from forming preferences when we see that they will be difficult to satisfy and will lead mainly to frustration. Second we do not want others to be taking an active role in what we prefer. And third, we do not want to be burdened with the costs of satisfying other people’s preferences when these are much more costly than our own. (Scanlon, 1986, p. 200)

The first of these reasons does not apply to religion. As I have argued, religious practices are not viewed as chosen by believers. And it is precisely this unchosen nature that motivates the granting of exemptions to religious practices burdened by uniform

derived from it, not with the intention of burdening a religious group.

\footnote{121} It may be possible to imagine a scheme of subsidies for religion that is based on a public religion fund. There are however two problems with this. First it is vulnerable to the previous objection of moral hazard and monitoring problems. The second is that it will lead at most to an equal subsidy for every person’s religion. Not one that takes into account the actual expense of religious practices and the disadvantages this imposes on persons, i.e., some persons will continue to get more than they need and others less.
rules and regulations. Believers cannot be steered away from their expensive fundamental moral obligations in the way, say, those who prefer expensive wine may be steered away from their. Scanlon also concedes that this argument about the possibility of preference change has limited force, especially in cases where the social formation of preferences goes all the way down, so to speak.

It is Scanlon’s second and third reasons that are more critical for the argument against religious subsidies. The second reason suggests that where there is deep disagreement in societies over what is worthwhile preferring and pursuing in life – and religion has historically been the focus of such disagreement – raising individual levels of satisfaction can encourage government interference in the formation of individual values and preferences. Given the central and non-negotiable role of religion in a person’s life this can have disastrous consequences, politically. Even if state involvement in a person’s religious practices and beliefs and the potential for conflict can be averted, political liberals still reject subsidies as a defensive measure. They believe that in working out the collective terms of social co-operation in a just society, protecting oneself from the potentially burdensome demands of other people’s preferences is preferable to the possibility of claiming a greater share of social resources, if one’s own preferences turn out to be difficult to satisfy.

Radical egalitarians deny this characterization of the demands of the believer’s religion as burdensome to others. If these demands are burdensome why should the believers, alone, bear the cost. Expecting them to do so may be the practicable solution, but it is not the moral one. Rejecting subsidies for expensive religion is ultimately an implicit endorsement of the justice of the market. For radical egalitarians, the political liberal objection to religious subsidies based on the burden it imposes on others is merely a restatement of the differences between them. It is not an advancement of the political liberal position against the radical egalitarian. I want to resist this conclusion because there are two important ways in which the political liberal has advanced the argument against the radical egalitarian.

The first is by showing that the political liberal support for religious exemptions and opposition to religious subsidies is not an unstable position. Rather the same reasons

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122 This part of the discussion is derived from Scanlon (1986) pp. 197-201.
that lead to support for exemption can also lead to opposition to subsidies. The political liberal support for exemptions is dependent on an implicit recognition of the limited state interference required to institutionalize it and the minimal burden these exemptions imposed on others. It is the very factor that motivates the case for religious exemptions - the non-negotiability of religion - that also motivates the case against subsidizing it - wariness that there may simply be no limits to religious expenses because religion is not negotiable. Moreover, the political liberal defense of exemptions and opposition to subsidies is not pre-political but depends on an assessment of the consequences of different political institutions, given the political and economic conditions of a functioning political community.\textsuperscript{123}

The second way the argument against the radical egalitarian has been advanced is that while the radical egalitarian and the political liberal differ, in principle, it shows they do not differ, in practice.\textsuperscript{124} Both concur that a liberal society ought to grant exemptions to religious practices, but reject subsidizing them. While radical egalitarians view this as a compromise of practicality with morality, political liberals do not. Nevertheless they accept the basic liberties and exemptions from uniform rules as the most feasible institutional means for accommodating religious pluralism in a political community.

\section*{V. Conclusion}

In this chapter, I argued that liberals should grant exemptions for religious practices, but they should not subsidize expensive religion. Sometimes, the cultural practices of a group are derived from their religious beliefs that it is difficult, if not impossible, to distinguish a cultural practice from a religious one. Then liberals recognize and support exemptions from uniform rules and regulations for these practices. Thus liberalism can accommodate the claims of strictly religious and culturally insular groups in this way. Recognizing these religious exemptions does not provide an incentive to cultural groups to view their culture as a non-negotiable moral commitment, because religions are not entitled to subsidies for their expensive practices. Thus viewing

\textsuperscript{123} This defense of exemptions and rejection of subsidies does not rest on the pre-political distinction between negative and positive liberties.

\textsuperscript{124} For example, G. A. Cohen (1995: Appendix) supports an equal distribution of resources for religion, not one that targets expensive religious practices for subsidies.
their culture as a non-negotiable comprehensive moral doctrine will limit, not expand, the potential support cultural groups can obtain from the state.
Chapter V
Culture, Autonomy and Adjustment

Chapter II outlined a political liberal rationale for group rights. This rationale views groups as an administrative convenience that facilitates the fair distribution of burdens and benefits to citizens in a political community, not as a moral category that justifies rights by itself. Chapter III then described three liberal rationales for justifying special rights for "culturally" different groups. The first involves targeting cultural groups to ensure social and economic justice. This can include eliminating economic inequality, rectifying past injustice and countering discrimination. The second involves enabling cultural groups to secure cultural practices, themselves. The reasons for doing so - resolving collective action problems and upholding associational freedoms - are compatible with liberalism. The third involves providing assistance to cultural groups for practices that help maintain a diverse common cultural structure that benefits all members of a political community. These normative claims and the institutions that address them do not directly secure culture. Whenever they do, the cost is borne by the group, itself, or the benefits accrue to every member of society. Addressing cultural claims beyond this requires state support for a cultural group’s expensive cultural practices, irrespective of the benefits that accrue to non-members. These are cases where the cost of maintaining their culture leads to members' socio-economic inequality.

There are three types of cultural groups generally associated with political claims based on culture - religious, ethnic and national groups. Chapter IV examined the liberal accommodation of cultural practices that are indistinguishable from religious ones. Specifically, I argue that when the cultural practices of a group are derived from their religious beliefs, liberalism can accommodate cultural claims as an instance of religious freedom. These claims are accommodated through the basic liberties of freedom of conscience, freedom of expression and freedom of association. They are also accommodated because liberals exempt religious practices from uniform rules and regulations. However, this accommodation does not extend to subsidies for expensive cultural practices, when these cultural practices are derived from religious beliefs.
This chapter develops a political liberal approach to subsidizing expensive culture for ethnic and national groups by distinguishing it from Will Kymlicka’s liberal autonomy approach. Kymlicka argues that culture provides the context in which persons make meaningful choices. Therefore the liberal state ought to subsidize culture when it is necessary to ensure a person has access to a stable cultural context. There is a tension between Kymlicka’s commitment to liberalism and his commitment to maintaining a person’s cultural context. Liberals concerned about equality need to address the disadvantage faced by persons adjusting to sudden changes in their contexts of choice due to unforeseen social and economic circumstances. However, liberals need not require that adjustment of a cultural context lead to its maintenance.

This chapter is organized as follows. Part II outlines Kymlicka’s liberal autonomy argument for subsidizing culture based on maintaining a person’s context of choice. Part III weakens the argument for maintaining a person’s cultural context by describing culture as one of many social contexts of choice, such as family, work, neighborhood and associations. For the state to maintain a person’s diverse social contexts of choice is both unnecessary and impracticable. Most persons adjust to social and economic changes themselves by relying on some social contexts – work and neighborhood - more than on others – ethnic associations. To do so they require access to a fair bundle of primary goods, such as the basic liberties, and income and wealth.

Part IV shows how this is not the case if all contexts of choice are threatened, simultaneously, due to unforeseen social and economic circumstances. This usually happens to persons whose family, work and associational life are all contained within the same framework, such as a language-nation or a factory-town. A threat to the language can simultaneously affect all contexts of choice. Members must then rely on state subsidies to adjust to new social and economic circumstances. This is also true for workers in a factory town. A threat to the factory can simultaneously affect all their contexts of choice. This justifies state support for a person adjusting her community to changes in social and economic circumstances when, like a factory-town or a language-nation, it encompasses her family, work and associational life. Whether it is a language-nation or a factory-town, adjusting must clearly begin within the boundaries of their

community, but liberals do not argue that it must end there. Adjustment can lead to the strengthening of a community, its division into several communities or even its complete dissolution. Liberals may lament the loss when a particular community ceases to exist, but they do not require that adjustment of a community lead to its maintenance. Part V concludes by addressing the nationalist, diversity and recognition objections to the liberal refusal to maintain a cultural community under all social and economic circumstances.

II. Culture as a Context of Choice

Will Kymlicka’s liberal autonomy argument for subsidizing a group’s culture in order to maintain it is that culture provides a person with a context of choice that enables her to “form, revise and pursue a conception of the good.” Cultural contexts of choice also provide individuals with the social bases of self-respect. When a cultural community is threatened by social and economic changes, a person expends more material resources than members of other cultural communities to maintain her cultural context. Therefore, the liberal state ought to help a person maintain her cultural context of choice in the face of social and economic changes. Failure to do so can lead to a systematic inequality when others, whose contexts of choice are not threatened or weakened, do not have to expend as much resources.

He argues that the ability of an individual to choose autonomously depends on her access to a set of alternative possibilities that she understands and knows how to evaluate. Cultures provide such alternatives and bases for evaluation. Therefore, the ability to make meaningful choices depends on, among other things, a stable cultural structure. Given the value they attach to individual autonomy, liberals ought to defend cultural

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126 Rawls (1971), Sec 67.
127 A person can also lose access to all of her social contexts of choice when the social context itself remains but she, herself, cannot gain access to it, while others can. Examples of the former include individuals who have psychological or other emotional disabilities. Psychological disabilities, such as mental illness, addiction or substance abuse, can lead to an individual losing her family, friends, employment and other social contexts. In these cases, the state can intervene to help these persons get back their lives through support programs, such as counseling, detox services, and the provision of half-way homes. The problem in these cases is not the absence of the social context, itself, but the individual’s inability to gain access to it. The social context remains intact, while particular individuals who were earlier a part of it are now detached from it. The point is not that these individuals are responsible for this loss, or that this loss is simply individual. But that even if the loss is caused by the change in the social and economic circumstances of a person, it is experienced only by the person concerned. These kinds of losses
rights, when such rights are required for protecting minority cultures. Kymlicka claims that culture as a context of choice provides individuals with the basis for meaningfully evaluating their choices. Kymlicka argues that "...Cultural membership is a good in its capacity of aiding our ability to judge for ourselves the value of our life-plans." Kymlicka is concerned not simply with the provision of choice, but with the provision of meaningful choice. Because it is a person's cultural context that meaningfully links her resources to her ends.

The decision about how to lead our lives must ultimately be ours alone, but this decision is always a matter of selecting what we believe to be most valuable from the various options available, selecting from a context of choice which provides us with different ways of life. This is important because the range of options is determined by our cultural heritage. ...From childhood on, we become aware both that we are already participants in certain forms of life (familial, religious, sexual, educational, etc.), and that there are other ways which offer alternative models and roles that we may, in time, come to endorse. We decide how to lead our lives by situating ourselves in these cultural narratives, by adopting roles that have struck us as worthwhile ones, as ones worth living (which may of course, include the roles we were brought up to occupy).

Persons pursue different ends. These can range from the welfare of one's family, friends and community, and an artistic or professional vocation, to simply fulfilling desires and pleasures. Personal ends reflect a person's conception of the good life. They differ from both political moral ideals and comprehensive moral doctrines. Unlike political moral ideals, which relate to the appropriate terms of a political order, personal ends relate to the terms by which an individual guides her personal life. Such personal ends may or may not conflict with the political ideals of any particular political order.

Unlike comprehensive moral doctrines, personal ends need not be developed doctrines about how all aspects of a person's life fit together in a consistent and coherent manner. A person can be a mother, an engineer and a musician. She may have a

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conception of her family, professional and artistic life that coheres or she may not. And her personal ends in different areas may even conflict when she is unable to resolve her competing commitments to her family, her work and her art. Personal ends are not viewed as obligations that are external to the person, but as a part of a person’s own life plans. These life plans are negotiated with others who are affected by them. Personal ends are considered idiosyncratic in that they are particular to a person and they need not be non-negotiable in the way comprehensive moral doctrines like religion are.

A person’s ends do not emerge in a social void. They have to begin somewhere. Persons initially form and examine their values and ends in the cultural contexts in which they are born and raised. What makes a conception of the good accessible to them is the cultural context within which they are formed and revised. A cultural context of choice provides a person with the social basis “to form, revise and pursue her conception of the good.” Cultural contexts of choice contain the communities, neighborhoods, associations, firms and families in which persons find themselves often, though not always, by birth. A cultural context connects an individual to social and historical traditions that makes their choices both possible and meaningful. Cultural contexts of choice enable persons to access a range of options. These options can be as mundane as choices about food and music, to more important choices about vocations, personal obligations and life partners. While a particular cultural context does not fix any of these options, it facilitates some of them over others. Whatever ends a person subsequently chooses will be constructed out of the cultural context of choice in which she initially finds herself, even if the ends she chooses ultimately turn out to be incompatible with her initial cultural context.

A cultural context also provides a person with the social bases of self-respect. The social bases of self-respect provide a person with the confidence that her conception of the good is worth carrying out and that she has the abilities to do so. In a liberal society a person’s social bases of self-respect as a citizen is assured by the political

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131 The distinction here is with religion viewed as a fundamental moral obligation that is imposed externally. Thus an Orthodox Jew does not simply choose his day of rest, but is required to observe the Sabbath due to the content of his beliefs.
132 Also see section III of Chapter II of this dissertation.
community when it ensures that all persons have equal access to the basic liberties and other primary goods.\textsuperscript{135} A person has at least one association - the liberal state - where she can participate and be affirmed as an equal sharing in the burdens as well as the benefits of citizenship. However, this affirmation is limited to a person's participation in the political community as a political equal. The social bases of self respect provided by the state do not necessarily extend to a citizen's personal ideals. A person gains confidence in her personal ends from the association and affirmation of others who are situated in a common cultural context of choice. In a liberal polity there is nothing about any particular cultural context of choice and thus the members who are a part of it that is superior or inferior to another. What is important is that a person belongs to at least one community that provides her with the basis for pursuing her personal ends others also affirm.

Liberals recognize individuals are socially embedded. They believe that their cultural communities form individuals' values and desires. Their different cultural contexts of choice influence and inform their desires and values. Nevertheless, liberals reject the notion that individuals' values and desires are limited by their cultural community, i.e., they recognize that a person's conception of the good may not be ultimately compatible with or even derived from her cultural context of choice. Liberals neither require that a person be limited by the ends available to her within her cultural community, nor that a person must go beyond them. Whatever a person makes of her particular cultural context is an expression of her own moral power - the power to form, revise and pursue her conception of the good. The liberal state does not interfere with or support the pursuit of any particular conception of the good, or any particular person's conception of the good over another. It only ensures that everyone has the same equal basic liberties and equal primary goods, such as income and wealth, in order to pursue her own conception of the good.

However, Kymlicka argues liberals assume rather than ensure that all persons have access to at least one stable cultural context of choice. While the culture of the

\textsuperscript{135} "Thus what is necessary is that there should be for each person at least one community of shared interests to which he belongs and where he finds his endeavors confirmed by his associates. And for the most part this assurance is sufficient whenever in public life citizens respect one another's ends and
majority in a political community is usually stable, this is not the case for minority cultures. Minority cultures are vulnerable to the market preferences, as well as, the political decisions of members of the majority culture. This can lead to a weakening of their cultural context. For example, when the language of a minority is denied official recognition, its members have to expend more resources to maintain their language than members of the majority do. While the use of a single language may be socially necessary for efficiently administering a political community, it imposes greater costs on the minority. Similarly, when a minority cultural community’s tradition is tied to the ownership of land, the high price of land can lead to the disintegration of the community’s traditional way of life. If the majority community depended on land for its traditional way of life, the state is likely to take political steps that protect land from the market. Thus members of a minority cultural community face a systematic disadvantage that members of the majority do not, when their cultural practices are expensive.

Kymlicka contends that liberals should help protect the cultural practices of minorities from the market preferences and the political decisions of the majority, i.e., support subsidies for the expensive cultural practices of members of a minority to help maintain their cultural context.

III. From Cultural Contexts to Social Contexts

This section critiques Kymlicka’s idea of culture as the only context of choice by describing other social contexts of choice in a person’s life. I show how the socially broad view with which Kymlicka initiates his discussion about the importance of a context of choice, becomes a normatively narrow view about culture as the only context of choice. He leaves out other social contexts of choice, such as class and neighborhood. He then assigns to culture the normative weight of all the other contexts in a person’s life. I argue that what provides individuals with alternatives and the basis for evaluation that enables them to make meaningful choices is their many social contexts, not a particular cultural one.

adjudicate their political claims in ways that also support their self-esteem. It is precisely this background condition that is maintained by the principles of justice.” Rawls (1971), p. 442.
In a recent critique, Waldron argues that Kymlicka has a narrow view of culture that ignores the extent to which our lives are multicultural. Waldron endorses what he calls the cosmopolitan view of the self that celebrates hybridity, impurity and intermingling. He contrasts this view of the “postmodern self” and cosmopolitan culture, with Kymlicka’s narrow view of the self and homogenous culture.

The cosmopolitan may live all his life in one city and maintain the same citizenship throughout. But he refuses to think of himself as defined by his location or his ancestry or his citizenship or his language. Though he may live in San Francisco and be of Irish ancestry, he does not take his identity to be compromised when he learns Spanish, eats Chinese, wears clothes made in Korea, listens to arias by Verdi sung by a Maori princess on Japanese equipment, follows Ukrainian politics, and practices Buddhist meditation techniques. He is a creature of modernity, conscious of living in a mixed-up world and having a mixed-up self.\(^ {136} \)

Waldron views this Irish-American’s self as the hybrid and impure self, celebrated in Rushdie’s Satanic Verses. He believes there is no tension between the man’s Irish-American ethnicity and his “multicultural” experiences. Not surprisingly, Kymlicka disagrees. He responds that this example is not about moving between societal cultures. Rather it is enjoying the opportunities provided by the diverse societal culture which characterizes the anglophone society of the United States.\(^ {137} \)

Kymlicka is skeptical about the extent to which the world of this particular Irish-American is really cosmopolitan. Perhaps Kymlicka rejects this Irishman’s cosmopolitanism because he appears to be consuming rather than interacting with other cultures. The market provides the medium of exchange, while anglophone culture sustains it. However, Kymlicka is too hasty in his dismissal of the challenge the Irish-American’s situation poses for his argument. He is misled by Waldron’s focus on the Irish American’s interaction with other cultures, rather than the Irish-American’s social situation. The disagreement between the two over whether Waldron’s Irish-American is a multicultural hybrid or a monocultural anglophone obscures what makes him a problem.


for Kymlicka’s argument - his class origin. Whether or not he is an “authentic”
cosmopolitan, his multicultural experiences are bourgeois experiences in a bourgeois
cultural context (or yuppie experiences in a yuppie cultural context). 138

This Irish-American’s context of choice is provided by his class, not his culture.
Replace the Irish-American in San Francisco with a Chinese-American, Jewish -
American or African-American in San Francisco and the example still holds. Or, to push
the argument farther, replace him with a Frenchwoman in Paris, or an Italian in Rome, or
a Sri Lankan in Colombo, or a Indian in Delhi, while leaving everything else intact, and
the description still holds. 139 Whatever their individual ethnicity, they are all of similar
class origin. They are united by their class context, not their cultural context. When we
add the adjective working class before Waldron’s Irish-American, his example begins to
seem implausible (though not impossible). The importance of class as a context of
choice is apparent from the ease with which the Irishman’s social situation translates
across cultures, but not across classes. And class is not the only context of choice that
translates across cultures. Institutions like the Catholic Church, Communist Parties,
human rights organizations, and academic and professional associations provide contexts
of choice that do not depend on a common culture. 140

Culture thus becomes one among many contexts of choice, such as class and
religion, that provide individuals with meaningful options. Rather than limiting an
individual’s context of choice to culture, we should expand it to include her many social

138 Nothing turns on the precise characterization of the Irishman’s social situation, i.e., whether it is he is a
yuppie or a bourgeois, apart from distinguishing it from a narrowly ethno-cultural one. Waldron can
respond that this characterization is not an argument against the claim that the Irish-American is
cosmopolitan, but a description of how he is.
139 The only change I would make in the case of the Indian and Sri Lankan is to replace Spanish lessons
with either lessons in Italian, French or German. South Asians do not have a “cultural context” for
Spanish.
140 David I. Kertzer’s (1990, p.2) description of the left and the church in Italy captures their functions as
“contexts of choice.”

“Il mondo cattolico e il mondo comunista - the Catholic world and the Communist world - are among the
most common terms of political discourse in Italy. ...The Church and the party are not simply segmental
institutions calling for limited areas of allegiance; rather, they call on the individual’s support in a wide
variety of roles and situations. Being a good Catholic, according to the model promulgated by the
hierarchy, entails behaviour and beliefs that permeate a person’s social life, and the allegiance called for by
the Italian Communist Party is scarcely less inclusive. Both the PCI and the Church provide
comprehensive systems of beliefs and behaviour, systems that are mutually exclusive. This is recognized
in the dual categorization of mondo cattolico and mondo comunista. The Church-Communist confrontation
tends to divide people into two hostile and, to an extent, socially autonomous worlds.”
contexts. Here contexts of choice are defined not only along the lines of diverse ethnic or national groups, but also along the lines of class, family, factory and neighborhood, among others.\[^{141}\] While this does not rule out the continued problem of inequalities in access to cultural contexts, they are no longer the only social contexts of choice in a person’s life. So the role of other social contexts of choice reduces the burden culture has to bear in providing persons with a range of options.

I want to clarify the idea of a social context by distinguishing it from both Kymlicka’s cultural context and Rawls’ social union.\[^{142}\] What distinguishes Kymlicka’s cultural context from a social context is that the former is based on ethno-culture, while the latter need not be. And what distinguishes Rawls’ social union from a social context is that members of the latter need not have shared ends, unlike members of the former. Social contexts are then broader than cultural contexts and social unions.\[^{143}\]

Kymlicka defines cultural contexts along ethnocultural lines. His examples of cultural contexts include linguistic groups, aboriginal groups, and at times religious groups.\[^{144}\] The common feature of these groups is their ethno-cultural character. Members of these groups share cultural traditions and practices that differ from others around them. Membership in these groups is usually unchosen and a matter of birth. Social contexts on the other hand can include, but are not limited to cultural contexts. They go beyond ethno-cultural contexts to include associations of different kinds. They can range from families and factories, to neighborhoods and nations. And membership in a social context need not be primarily a result of birth. It can also be a result of simply bumping into a social context and then becoming a part of it, or the result of a more deliberate decision to join one. There are very few individuals who are not part of at least one social context. And most individuals are members of many social contexts at the same time.

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\[^{141}\] For a fascinating discussion of class as a context of cultural choice see Pierre Bourdieu (1988).
\[^{142}\] I derive the idea of a social context of choice both from Rawls’ idea of a social union and Kymlicka’s idea of culture as a context of choice. (Rawls, 1971, pp.520-529; Kymlicka, 1989, pp. 162-178)
\[^{143}\] The idea of social contexts is closer to the anthropological conception of culture that includes all aspects of social life than it is to the narrowly ethnic conception of culture used by Kymlicka. Social contexts are also similar to Raz’s idea of social forms. Although Raz is ambiguous about the exact limit social forms impose on a person’s comprehensive goals. See Joseph Raz (1986).
\[^{144}\] Kymlicka (1989) refers to the French-Canadian, Inuit, Anglo-Canadian and Pueblo cultures in Chapters 8&9. He also refers to the Amish, Hutterites, Quakers, Hasidim and Sikhs as examples of polyethnic groups (1995, p. 177).
Social contexts also differ from Rawls’s idea of social unions. The characteristics of a social union include shared ends and common activities valued for themselves. While individuals may pursue distinct personal ends, these ends are connected to those of others in ways that are complementary and lead to the good of all members of a social union. Rawls’ social unions are diverse. At its broadest a social union can be the “well-ordered society,” i.e., the liberal political community itself. At its narrowest a social union can be a family with the shared goal of pursuing the well-being of all its members. Social contexts, on the other hand, can include persons who share common ends, but need not do so. Members of social contexts can have contradictory, not just complementary ends. They can differ quite radically about their personal ends, and even about the ends of the particular social context they share. But they can all benefit from being members of the same social context while doing so. They view their social context as a means to social advancement and personal well-being, without necessarily viewing it as a collective social endeavor with shared ends.

Social contexts are not stable. They are always in flux. An individual may face sudden changes to one or more of her social contexts. By belonging to multiple social contexts most members of a political society are able to withstand the loss caused by these sudden changes in one of their social contexts. For example, when a workingwoman divorces her husband, she may depend more on her co-workers and her friends to provide her with a social context of choice. In a just society where she continues to have access to a fair level of material goods, her greater dependence on her workplace or friends, rather than her family, is sociological not economic. Individuals, themselves, secure their social contexts with access to the primary goods of the basic liberties, and income and wealth. Under these circumstances intervention by the state to ensure a person has secure access to all her social contexts is not always required. It is impracticable for the state to distinguish between the workingwoman’s many social contexts - circles of friends, clubs, neighborhoods, and workplaces - and seek to maintain each of them in the face of economic, social, cultural, and personal changes. And in any case, most persons would not want the violation of privacy entailed by the state involvement and interference necessary to enforce a claim for maintaining all of their

145 Rawls refers to the political community as the social union of social unions.
diverse social contexts. Political liberals thus argue the state need not maintain a person's different social contexts. This also applies to a person's cultural context.

IV. Encompassing Contexts and Adjustment

Some social contexts can be more important than others can because they encompass many other contexts of choice. The factory-town, the neighborhood, the city, the aboriginal community and the language-nation are examples of this. In these cases several different social contexts - family, firm and other forms of associational life - are all contained within a single encompassing context. When an encompassing context is threatened by external circumstances all or most of the social contexts of a single individual can be simultaneously affected. When the factory closes down in a factory-town, the worker who loses her job will no longer be able to depend on her family, friends, clubs, and neighborhood to provide her with social contexts of choice. They will all be experiencing the same loss at the same time. In these circumstances political liberals cannot assume she has the social preconditions to make choices. Liberals concerned about equality need to address the disadvantage faced by persons who are adjusting to sudden changes in their encompassing contexts due to unforeseen social and economic circumstances.

Encompassing contexts share many of the features of encompassing groups described by Margalit and Raz in their defense of national self-determination. First, encompassing contexts have a common character and a common culture, broadly defined. This common culture can affect many aspects of life. In a neighborhood, it may reflect the type of businesses and restaurants that are situated there or the type of individuals who live there. This common character may be ethnic, class or based on a particular system of production, like an industrial district. This character will influence persons growing up in or entering a social context. The types of careers they choose, values they imbibe, and friends they make will all be influenced by their encompassing context.

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146 I derive many of the following features from Avishai Margalit and Joseph Raz (1990).
147 My use of encompassing contexts can be viewed as the political conception of "habitus." See Pierre Bourdieu (1977) especially Chapter 2. "Structure and the habitus."
Second membership in an encompassing social context is a matter of mutual recognition based on informal acknowledgment, rather than formal achievement or structures. Members acknowledge each other as being members of the same social context. While the lives of different individuals may be deeply intertwined, there is no requirement of an official status attached to membership. Unlike say a political party or a guild, a social context does not require that members achieve a common skill level or acknowledge a common political end in order to be recognized as members. They view membership in this encompassing social context as a matter of belonging rather than as a matter of achievement. Third, persons identify themselves as members of an encompassing social context. It provides them with a prominent, if not the primary, expression of their social identity. Though their identification with their social context can be ambiguous. It is as much externally imposed by other members of their social context or members of other social contexts as internally expressed by them. Finally, encompassing contexts are usually not face-to-face groups, where all members know each other personally.

However, encompassing contexts differ from encompassing groups, as described by Margalit and Raz, in two important respects. First they are not limited to cultural communities. Second their entire stability is tied to the continuity of a central framework or structure. When this framework is weakened the entire encompassing context is threatened. In the case of a factory-town this central framework may be production in the factory. In a language-nation it is the language of the nation. In a neighborhood the central framework that helps maintain the encompassing context may be a particular commercial or cultural center, or simply the low rents. In an aboriginal community the central framework may be the collective system of owning land. When an encompassing context is still stable, it is not often clear what its precise central organizing framework is. However, once an encompassing context begins to fall apart it is often possible to discern the central framework that helped stabilize it.  

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148 This must not be confused with acknowledging each other as equals. For example a master can acknowledge a slave as being part of his social context of the plantation, without acknowledging him as an equal.
149 This distinction between a central framework of a social context, whose weakening undermines its stability, and less central ones, whose weakening does not, is akin to Unger’s distinction between frameworks and routines. However, my use of this distinction is sociologically more modest than Unger’s.
In the factory town a person’s work, family, friends, trade union, clubs and associations, are all connected with production in the factory. The factory-town encompasses all of her contexts of choice. If the factory goes under, it threatens not just a worker’s job, but also all her social contexts. Worker-residents in a factory town going out of business will have to spend more of their resources to maintain their social context, than similarly situated others. Providing only equal primary goods, such as income and wealth, will be inadequate because of the cost worker-residents will incur to maintain their social contexts or adjust to a new one. This is also true of a neighborhood threatened by gentrification, an aboriginal community whose land is being bought up by developers, or a language nation that fails to win official recognition for its language.

Assisting persons in a particular encompassing context to adjust to unforeseen social and economic circumstances is not the same as ensuring access to whatever encompassing context they may choose. Political liberals support subsidizing individuals whose encompassing context is threatened by external circumstances that are beyond their control. They believe that adjustment must begin within a person’s particular encompassing context – where else can it begin - but they have no view ex-ante about where adjustment must end. For political liberals there is no clear distinction between adjusting and maintaining a person’s encompassing context. The adjustment of a person’s particular encompassing context to unforeseen circumstances can strengthen it, transform it, or even lead to its complete dissolution. What is important here is not the protection and continuity of the encompassing context per se, but extending support to individuals members who have to adjust to unforeseen circumstance and thus find themselves with a smaller bundle of primary goods, such as income and wealth. I clarify the political liberal position with the example of the factory-town as an encompassing context of choice.

IV.a. The Factory Town. Consider a factory town that produces motorcars. In this factory town the family life, associational life and work life of most persons are all contained within the same encompassing context. When the factory runs at a loss and is

Unlike Unger, I focus not on people’s interests in radically destabilizing social contexts, but rather their interests in stabilizing them when they are radically destabilized. See Roberto Mangabeira Unger (1987),
threatened with closure, most people within the town are affected. They not only lose their jobs, but also all of their other social contexts. Not only is their work threatened, but their associational and family life as well, since the factory town encompasses all of these. Under these circumstances, the liberal state can support worker-residents of the factory town with subsidies to help them adjust to new social and economic circumstances.

This support can be extended to help maintain the factory-town in any number of ways. Worker-residents can use the subsidies to improve the factory's productivity in producing motorcars. They can use the subsidies to help the factory adjust to the production of other vehicles such as tractors or to the production of machine tools. They can use the subsidies to attract other industries to invest in the town. They can also use the subsidies to transform the factory-town into an industrial district with many firms producing the different components that were all earlier produced by the same firm. If all else fails, worker-residents may finally close down the factory-town and use the subsidies to help themselves relocate to other jobs in other places. Support extended by the state to ensure that worker-residents of the factory town have access to stable social contexts is compatible with liberalism. This support is for helping persons adjust their encompassing context to sudden changes in social and economic circumstances, not for maintaining their encompassing context no matter the circumstances.

There are many other reasons for subsidizing the factory town, apart from the cost of adjustment imposed on individual workers. These can include the social benefits of maintaining a production system and the knowledge accumulated in it. Some subsystems of the factory may be productive and maintaining the factory can allow these subsystems to be strengthened. 150 The state may want to support and subsidize the production of motor vehicles, more generally. 151 The state may want to develop the region where the factory is located. All of these are important rationales for subsidizing the factory-town. While they may indirectly subsidize the workers adjustment to new social circumstances,

pp. 88-91 and pp. 151-159.
150 Literature on restructuring in Eastern Europe examines the extent to which some high productivity and flexibility subsystems exist within otherwise inefficient production systems. For example see Gerry McDermott (1998).
151 Auto industries in many countries including the US, France, and Germany were developed with the help of the state because the state believed it would benefit the economy as a whole.
they are not direct rationales for doing so. I argue the state is morally required to subsidize worker-residents of this factory town to adjust to new social circumstances, irrespective of the industrial, social or economic benefits that can accrue from continuing production at the factory.

These are not open-ended subsidies but only temporary ones. Their provision is dependent on a commitment from the residents of the factory town to restructure production and their encompassing context in a way that gradually decreases dependence on the state for subsidies. The subsidies granted for adjustment here are in addition to the share of primary goods, such as income and wealth, the residents of the factory town are entitled to in a liberal egalitarian scheme of justice. Political liberals justify support for adjusting encompassing social contexts, without prejudging where such adjustment will lead. The political liberal approach to subsidizing other encompassing contexts, like cultural ones, is similar.

Culture is an important social context of choice. To the extent that liberals value social contexts and appreciate their role in individual choices, they also do so for cultural contexts. Like the family, firm, neighborhood and association, individuals also belong to cultural communities, based on ethnic, linguistic or racial groups. Liberals do not seek to distinguish between or value one set of social contexts over others. They do not grant to culture as a social context priority over, say, the neighborhood or class as a social context. They believe that by ensuring the basic liberties, fair social and economic opportunities, and an equal distribution of income and wealth, the state enables individuals, themselves, to secure their own social contexts including their cultural ones. Individuals can themselves grant priority to some social contexts over others - strengthening some, weakening others, or forming new ones, altogether. Sometimes cultural communities, such as a language nation or an aboriginal community, encompass a person’s many other contexts of choice. When such encompassing cultural contexts are threatened by social and economic circumstances the liberal state can subsidize persons to adjust. The liberal rationale for doing so is the same as the liberal rationale for subsidizing adjustment for worker-residents of a factory-town. The example of the language-nation as an encompassing cultural context of choice can help clarify this.
IV.b. The Language-Nation. Consider a minority language-nation in a political community. Language nations, as opposed to linguistic minorities, occupy some contiguous territory. Within this territory their language-nation forms an encompassing context of choice. A member's family, associational, work and neighborhood life is all contained within the language-nation. These language-nations require no support to maintain their language. However, they require support to interact with the state. This is because the political business of the state is usually carried out in the language of the majority. This is reasonable from the perspective of social efficiency. However, if members of the minority language-nation receive no support in interacting with the central state it will lead to an inequality. They will have to bear the cost of interacting with the central state; a cost that other citizens do not have to bear.

Members of the language-nation require no support from the state to maintain their language. They only require support from the state to interact with it. This demand is reasonable, given that as equal citizens they should share in the burdens as well as the benefits of social cooperation. Since their contributions as equal citizens helps maintain the central state, it is only fair that they enjoy the benefit of a relatively cost free interaction with it. Members of a minority language-nation also expect the capital of the political community to be multilingual in character. It is, after all, the political center of the entire political community, not just that of the majority language speakers. The role of such capitals in the life of a political community lends importance to them as commercial and political centers they would not otherwise have. And this is acknowledged in making capitals of multilingual states "user-friendly" to speakers of minority languages.

This, however, need not be the case when a member of a language-nation settles in a region where her language is not spoken. Here, at best, she can expect support to learn the regional majority language or help in translations. She cannot expect an official status for her language in dealings with the regional or local governments. However, she continues to have a right to such recognition from the central government. So the member of a language minority can expect support in adjusting to new social and economic circumstances in a region where she does not speak the language. This adjustment can, but need not, require the state to help her maintain access to her language. The question of whether or not she is able to do so will depend on the cost of
such maintenance. This will entail evaluating the viability of maintaining schools and other institutions for a group of distinct language speakers. And the viability of maintaining these linguistically distinct institutions will depend on the concentration of minority language speakers in a particular region.

These distinctions are commonplace and reflect the fact that many states make decisions about how to balance linguistic claims with efficiency considerations. Doing so will lead to adjustments on all sides. A member of a minority cannot expect the state to eliminate the cost of all interactions. At the same time for the state to compel members of a minority language-nation to learn the official language on the grounds of efficiency, alone, fails to take into account the costs to the minority. The huge costs of such a transition, alone, can explain the intense opposition of minority language-nations to being forced to learn a language of the majority.\footnote{152}

The liberal argument for subsidizing encompassing cultural contexts is similar to the liberal argument for subsidizing other encompassing social contexts. They do so when a particular cultural context encompasses many contexts of choice and the demise of the cultural context can lead to the simultaneous demise of a person's family, work and associational life. As in the case of subsidizing adjustment in a factory town, political liberals do not distinguish between adjusting and maintaining a cultural context. For political liberals refusing to distinguish between adjustment and maintenance enables the liberal state to avoid taking sides with a cultural community when there are differences about what constitutes "authentic" cultural practices. This also enables the liberal state to be neutral between competing views among members of a cultural community about their conception of the good of the community.\footnote{153} Political liberals believe that adjustment can lead to the strengthening of a particular encompassing cultural context, or its weakening, or its division into different cultural contexts or even its disappearance altogether. Political liberals do not preclude any one of these possible outcomes. What is important for political liberals is that individuals who are members of a particular cultural context receive support for adjusting to changes in social and economic circumstances that adversely affect their encompassing cultural context. Political liberals do not support

\footnote{152 For a discussion of this question see Will Kymlicka (1997).}
\footnote{153 I am grateful to Robin Varghese for emphasizing this point.}
permanent subsidies for a person’s encompassing cultural context no matter the social and economic circumstances.

V. Conclusion: Three Objections

In this chapter I distinguished the political liberal rationale for subsidizing culture from that of Kymlicka’s liberal autonomy view. First I argued that political liberals support subsidies for culture to help a person adjust her cultural context to changes in social and economic circumstances. Political liberals neither predict nor preclude any particular outcome in the course of this adjustment. They only require that the cultural context that is a consequence of this adjustment be compatible with political equality. Finally, political liberal support for subsidizing culture is temporary and does not reflect a commitment to maintaining a particular cultural context whatever the cost.

Concluding I want to address three objections to the political liberal argument for subsidizing expensive culture - the nationalist, the diversity and the recognition. The nationalist objection is that individuals treat their culture as an end in itself, not just as a social means. The diversity objection is that only subsidizing cultural adjustment implicitly favors the dominant culture and leads to cultural uniformity. The recognition objection is that what person’s seek is not economic subsidies for their culture, but the political recognition of their cultural difference.

V.a. The Nationalist Objection. The nationalist objection is that political liberals have a mistaken view of the role of culture in a person’s life. Individuals do not simply view their culture as a social means. They also view their culture as an integral part of their personal ends. Another way of stating this objection is that many persons view their culture as an impersonal good, i.e., they expend their personal material resources in order to promote and protect their cultural community irrespective of the benefits that accrue to them. For example, many Tamils view their culture as more than simply a means that enables them to pursue their social and economic opportunities. Rather they see their culture as an end that unites them as a cultural community - an end they are prepared to

\[154\] For example see Chatterjee (1993); Tamir; Miller; Hurka.
secure by foregoing material benefits. The fact that many Tamils view their culture as an end, itself, does not imply that they do not also derive benefits from their culture as a social context. Nevertheless, the view of culture as simply a social context underestimates the value that Tamils attach to their culture in their lives. The very intensity of ethnic conflicts in Sri Lanka, in particular, and around the world, in general, attests to the importance that people attach to culture in their lives.

Political liberals do not deny that many people, even most people, view their culture as more than just a social means. For some securing their culture is even a non-negotiable conception of the good that they seek. For others it is one of many important personal ends that they simultaneously pursue. Clearly culture is not just a social means for pursuing diverse ends, but is also an end in itself. Now the political liberal argument for viewing culture as a social means rather than a personal end or ideal is a normative one, not a positive one. To the extent that persons seek support from the liberal state to protect and secure their culture they must do so in terms that others cannot reasonably reject. Those who do not view their culture as a personal end or attach the kind of importance that nationalists do to culture, can reasonably reject claims for supporting culture in this way. On the other hand even those who do not view their culture as an end in itself, require a social context such as culture, though not only culture, to pursue their ends, whatever they are. They cannot reasonably reject the claims of those who a disadvantaged because their culture as a social context is threatened by external social and economic circumstances.

However, they can and they do reject the claims of those who seek support for their culture because it is their personal end. Moreover political liberals reject subsidies for personal ends, because they believe that liberal state should be neutral between different conceptions of the good. Ultimately political liberals do not reject the

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155 Ramaswamy (1997, pp. 65-66) observes this with Tamil poets: "Dravidianism's fundamental agenda, of course, was to establish the absolute pre-eminence of Tamil in all spheres of life and being, and to ensure that devotion to the language (and its community) was not diluted by any other passions - the Indian nation, for the gods of the Hindu pantheon, or even for the families and mothers of individual devotees. For Tamil is everything; it is life (ayir), beath (avu), and consciousness (unarvu) of every true Tamilian. In its purest form, there were no divided commitments in Dravidianism, no subordination of Tamil to Shiva, to literature and learning, or to India. Tamil was not a means through which to construct something else, be it an alternate religious or civilization formation, or allegiance to India. In and of itself, it ought to be the very center of everything in the devoted Tamil speaker's life." pp. 65-66.
nationalist claim that some people pursue their culture as an end. They grant that some people view their culture as an end and they have every right to pursue their culture as a personal end or an ideal. What political liberals reject, however, is the nationalist contention that those who view their culture as an end are entitled to a greater share of social resources in order to pursue it, while those who have ends that are not about their culture do not.

V.b. The Diversity Objection. The diversity objection is that the political liberal support for adjusting cultural contexts but not for maintaining them, ultimately leads to cultural uniformity. In a liberal society the culture of the majority will enjoy the benefits of economies of scale unlike the culture of the minority. While all members of a liberal society may have equal basic liberties and primary goods, members of the minority culture will have to spend more than members of the majority to maintain their culture. Refusing to subsidize the culture of the minority will lead to their systematic disadvantage or their assimilation into the majority culture. Members of the minority will then have to choose between economic inequality and cultural assimilation. Political liberal support for adjusting cultural contexts rather than maintaining them will ultimately diminish cultural diversity. The political liberal response to the diversity objection is that political freedom and economic equality do not lead to the dominance of a particular culture but fosters the development of different cultural identities and expressions.

In a political community where all persons are treated as equals we assume that members of a minority culture will not be treated with political hostility or prejudice, i.e., the majority will not use their greater numbers politically to disadvantage the minority socio-economically. If all other factors affecting the minority and the majority are assumed to be the same, then the only difference between the two will be in how their numbers affect their ability to maintain their culture, themselves, given an equal bundle of primary goods. The disadvantage that is attributed to being a member of a minority then must emerge from the claim that there are economies of scale in culture that lead minorities to expend more to maintain their culture. The salience of economies of scale
arguments is being challenged in areas such as industrial production and productivity.  

Even if economies of scale do apply to areas such as industrial production, it is not at all clear that they do to cultural practices. Cultures can also have diseconomies of scale. For example, smaller communities may be better at resolving collective action and assurance problems than larger ones. In smaller cultural communities solidarity and trust may be easier to develop, and this will help communities sustain themselves, culturally. There is nothing intrinsic about the number of members in a cultural community that renders a culture cheaper or more expensive than another. And it is never clear how the cost of cultures will actually vary from time to time. Cultural communities with many members may have practices that are no cheaper than cultural communities with fewer members. Moreover, the majority culture is often divided into several subcultures, and so, for that matter, is the minority culture. There are no majority cultures and minority cultures and thus expensive and cheap ones. Rather there are many diverse cultures, some aspects of which may be expensive while others may be cheap.

This does not imply that all cultural contexts that exist in the present will continue to exist in the future. There is no way of predicting ex-ante which old cultures may die out or which new ones will be born. Under conditions of freedom and socio-economic equality persons will use their resources to create and recreate cultural contexts as they pursue their diverse conceptions of the good. In a liberal society, cultural and social

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156 Many sociologists of production now argue that mass production, for example, with standardized inputs, large fixed investments and stable markets may be statically efficient, but they are not always dynamically efficient. As customers develop varied tastes and require more complex and differentiated products even the static efficiency of these forms of mass-produced is being challenged. The industries that are most successful are those that have the flexibility to move between different markets, distinguish their products from others, and change their production techniques as well as the goods that they produce rapidly and with low cost. In a world with unstable markets the advantage attributed to particular forms of scale economies no longer apply with the same certainty. See Piore and Sabel.

157 The question is this: if some conceptions will die out and others survive only barely in a just constitutional regime, does this by itself imply that its political conception of justice is not fair to them? Is the political conception arbitrarily biased against those views, or better, is it just or unjust to the persons whose conceptions they are or might be? Without further explanation it would not appear to be unfair to them, for social influences favoring some doctrines over others cannot be avoided by any view of political justice. No society can include within itself all forms of social life. We may indeed lament the limited space, as it were, of social worlds, and of ours in particular; and we may regret some of the inevitable effects of our culture and social structure. As Berlin has long maintained (it is one of his fundamental themes), there is no social world without loss: that is, no social world that does not exclude some ways of life that realize in special ways certain fundamental values. The nature of its culture and institutions proves too uncongenial. But these social necessities are not to be taken for arbitrary bias or injustice.” Rawls, 1993, p. 197. Also see his discussion of the case of the Amish in pp. 199-200.
pluralism is a fact of life for the same reasons that moral pluralism is. The only way to limit the creation of diverse cultural contexts is to limit the freedom that makes a society liberal. Ultimately a liberal political community that subsidizes adjusting a person’s cultural context to new social and economic circumstances, but not maintaining her particular cultural context, need not tend towards less diversity.\footnote{This is of course not to say that a liberal society does not favor certain social contexts over others. For example, it will presumably favor social contexts that are more liberal over ones that are not. But this will not be a requirement of living in a liberal society but the fact that the political moral values of a political community will undoubtedly influence the social contexts within it. Nor is this to claim that particular social contexts that are compatible with a liberal society will always survive. They may disappear. And their disappearance may be lamentable. See Rawls (1993), pp. 195-200.}

\textit{V.c. The Recognition Objection.} Persons seek political recognition for their cultural difference not economic redistribution for their cultural practices. Eliminating economic inequality, rectifying past injustice, countering discrimination, resolving collective action problems, upholding associational freedoms, and subsidizing culture is important to cultural minorities. However, what is distinct about the political claims made by culturally different groups from groups that are economically disadvantaged is that the former also involve a claim to political recognition that is not entailed by the latter. This claim to cultural recognition is based on differentiating one cultural group from another. This is unlike the case of economic redistribution, which invariably involves effacing differences between economic groups.\footnote{This is not necessarily the Marxist view of economic differences.} Thus members of cultural groups do not simply seek political recognition as equal citizens of a political community, but they also do so as members of their cultural community.\footnote{See Charles Taylor (1994) and Nancy Fraser (1997), “From Redistribution to Recognition? Dilemmas of Justice in a ‘Postsocialist’ Age?” for discussions of the political claim of cultural recognition.} The political liberal response is to resist the normative distinction between recognition and redistribution. Political liberals respond that distinguishing recognition from redistribution risks weakening the former in two ways.

The first potentially adverse consequence of separating redistribution from recognition is that this may lead to persons getting less than their equal share of social resources. When recognition is distinguished from redistribution it is possible to argue that a person with fewer rights or resources is an equal member of the political
community simply because she is granted equal political recognition. Here, recognition of equal membership in the political community does not entail granting the same political rights or an equal bundle of primary goods. For example, some scholars argue that while Locke granted recognition to all persons as moral equals, this did not lead him to grant equal political rights to everyone. He believed that unequal political rights based on the ownership of property, was compatible with equal political recognition as a citizen of a political community.\textsuperscript{161} Similarly, libertarians believe that equal recognition is compatible with extreme inequalities of income and wealth. Libertarians thus believe that recognition does not entail redistribution. They too separate recognition and redistribution. Distinguishing recognition from redistribution thus weakens recognition by making it a political moral characteristic devoid of distributive consequences.

The second potentially adverse consequence of separating redistribution from recognition is that this may lead to persons getting more than their fair share of social resources. Recognition now seems like a political strategy to get more than one's fair share of social resources rather than the political moral basis for a fair distribution. Separating redistribution from recognition then weakens recognition as a political moral claim. When members of a cultural group now make claims for recognition they are then viewed with suspicion as setting the stage to stake a claim for more than their fair share.

Ultimately separating recognition from redistribution avoids rather than addresses the very problem raised by cultural pluralism in a liberal polity: what does the recognition of all citizens as equals entail politically in a liberal society given the fact of social pluralism? What political liberals ultimately require is that all persons be recognized as equal members of a political community. They then seek to develop a political theory about the fair distribution of social resources given this recognition of equality. Equal political recognition is built into a fair theory of distribution when individuals equally enjoy the benefits of and share in the burdens of a system of social and economic cooperation.

In this chapter I argued that culture is an important social context of choice. More specifically, I argued that when a person's encompassing social contexts are threatened by sudden social and economic changes, the liberal state must help them adjust.

\textsuperscript{161} Josh Cohen (1986).
However, the liberal state need not help them maintain their social contexts. This is also true of cultural contexts. For encompassing cultural contexts such as a language nation and a tribal community, state subsidies are justified as temporary measures to face unforeseen external circumstances, not as permanent ones to help maintain whatever cultural context a person chooses. In the next part of my dissertation I explore how the rational for granting cultural rights in the first part can be applied to design just institutions that help resolve group conflict in Sri Lanka and the United States. More specifically I examine the claim of national self-determination made by Tamils in Sri Lanka and the claim for political representation made by Blacks in the United States. There I show that a political liberal approach provides both a politically plausible and morally desirable solution to these conflicts.
Chapter VI

Federalism in Sri Lanka

This chapter develops a political liberal defense of federalism as a political solution to ethnic conflict in Sri Lanka between majority Sinhalese and minority Tamils.\(^{162}\) I defend federalism as a stable political consensus between Tamil liberals and Sinhala liberals, not simply as an unstable political compromise between Sinhala nationalists who prefer a unitary state and Tamil nationalists who prefer to secede. The strategy of this political liberal defense is to reinterpret an ethnic conflict between Tamils and Sinhalese as a political conflict between liberals and nationalists.

It is hard to distinguish liberals from nationalists in a situation of ethnic conflict. Individuals may share political moral values, but choose different political arrangements. Similarly, individuals may differ in their political moral values, but choose similar political arrangements. In Sri Lanka, Sinhala liberals view the unitary state as a means of instituting political equality, while Sinhala nationalists view it as a means of Sinhala domination. Tamil liberals view secession as a means to strengthen Tamil culture, while Tamil nationalists view it as a means of Tamil domination. The Sinhala liberal and Tamil liberal need not be political opponents who support different political arrangements, but are potential political allies who share the same political principles. For the Sinhala liberal, acceding to federalism need not be a compromise of liberal principles with Tamil nationalism because he rejects the group bias against Tamils of a unitary Sri Lanka. Similarly, for the Tamil liberal, federalism is not a compromise of liberal principles with Sinhala nationalism, when he rejects an illiberal Tamil state. Politically, this chapter is a left-liberal attempt to expand support for federalism in Sri Lanka by distinguishing the Sinhala liberal from the Sinhala nationalist, and the Tamil liberal from the Tamil nationalist.

This chapter is divided into five parts. Part II describes the political positions represented in the Sri Lankan conflict and their preferred political arrangements. Part III persuades the Sinhala liberal who endorses individual equality to accept federalism. Part

\(^{162}\)For a political liberal theory of federalism, more generally, see Wayne Norman (1994).
IV dissuades the Tamil liberal from endorsing secession. Part V concludes by addressing two political objections to federalism in Sri Lanka.

II. Political Arrangements and Political Positions

The three political arrangements under consideration in Sri Lanka are a unitary state, a federal state within a united Sri Lanka, and two separate states - one a Sinhala majority state and the other a Tamil majority one. The political positions are the Tamil liberal, the Tamil nationalist, the Sinhala liberal, the Sinhala nationalist and the leftist-liberal.163 The Tamil liberal and Tamil nationalist support the establishment of a separate Tamil state. The Sinhala liberal and Sinhala nationalist support a unitary state. The leftist-liberal supports federalism.164 First, a definition of the political arrangements.

II.a. Political Arrangements

A Unitary State. By unitary state, I mean the set of political arrangements where all powers - executive, legislative and judicial - are concentrated at the center. A unitary state may involve the separation of powers horizontally, i.e., the separation of executive, legislative and judicial powers within a political unit. However, it will not permit the separation of power vertically, between a political unit and subunits. A unitary state may permit the delegation of such powers to a subordinate unit, but it will not permit the alienation of powers. Under a unitary system of governance political powers that are granted to a subordinate unit can always be retracted at the discretion of the central state. Examples of unitary states include France and Sri Lanka.

A Federal State. By federalism, I mean the broad class of political arrangements within a single political unit between a unitary system, where all powers are concentrated at the center, and secession, where there are a minimum of two independent political

163 There are two other prominent ethnic communities in Sri Lanka - the Muslims and the Hill-country Tamils. For the sake of brevity, I do not deal with them in this chapter because they do not pose an obstacle to my argument. They both support a federal solution to the conflict in Sri Lanka.
164 I want to emphasize these positions are representative political positions associated with real political positions in Sri Lanka. They are stylised descriptions and are not intended to be exhaustive. By this I mean there are many Tamil liberals and Sinhala liberals who may support federalism. My point is to develop the normative rationale for Tamil liberals and Sinhala liberals who may not, and convince them to do so.
units. Federal arrangements can range from quasi-federal ones, like India, to federal arrangements, like the United States. A federal arrangement involves autonomous spheres of political action for the primary political unit and the subunits. Neither can encroach on the other in ordinary politics. Nevertheless, it is possible to renegotiate the division of political powers during moments of extra-ordinary political change. My own conception of federalism follows the traditional one in distinguishing two spheres of autonomous political action for the central government and the political subunits. It departs from some interpretations of the traditional conception in not requiring the consent of both the central state and all the subunits for renegotiating the division of vertical political powers.\textsuperscript{165} Other than the broad contours outlined above my discussion of federalism in this chapter neither presupposes, nor advocates any particular institutional instantiation of it.

\textit{Two Separate States.} By two separate states, I mean the establishment of a Tamil majority state in the predominantly Northern and Eastern Provinces of Sri Lanka, adjacent to a Sinhala majority state in the rest of Sri Lanka. The relations between these two states would be indistinguishable from the relations between any two independent states that share a common boundary. They may involve trade and tariff treaties, diplomatic relations and even mutual defense pacts. But none of these formal agreements would permit or entail political intervention by one state in the internal political decision process of the other. They would be two separate politically independent entities. My argument about the political morality of separation does not presuppose the nature of the political relations between these two adjacent states.\textsuperscript{166} For example, these relations can

\textsuperscript{165} Here I follow the neo-federalist approach. For example see Bruce Ackerman (1991) and Akhil Reed Amar (1987). Also see Michael W. McConnell (1987). For an argument that the distinction between a federal and a unitary system is ultimately a practical rather than a theoretical distinction see Dahl (1989), "Federalism," pp. 197-209.

\textsuperscript{166} However, the relations between the two new states may affect the political stability of separation. The question of which political arrangement - a unitary state, a federal state or two separate ones - is political stable is a separate one. I do not address it here. Scholarly advocates of separation as a stable solution to ethnic civil wars include Chaim Kaufmann (1996); John J. Mearsheimer (1993); Stephen Van Evera (1995). For a broader argument in favor of separation as a viable policy option, rather than simply a last resort to claims of national self-determination, see Michael Lind (1994). For critiques of secession as solutions to civil wars see Radha Kumar (1994,1997) and Daniel Byman (1997). The stability argument for separation with regard to Sri Lanka is made by Sirimal Wijesinghe (1995), Manikkalingam (1995) "The Myth of Eelam."
range from peaceful, such as that between the United States and Canada, to belligerent, such as that between Israel and Syria. Next, let me describe the political positions.

III. Political Positions

The Sinhala Positions. There are two Sinhala positions under consideration - the Sinhala liberal and the Sinhala nationalist. They both support a unitary political arrangement for Sri Lanka. Nevertheless, their rationales for such an arrangement differ. The Sinhala liberal supports a unitary state because he believes it ensures individual equality. The Sinhala liberal recognizes that Tamils face inequality as a result of belonging to a minority linguistic group and is willing to consider measures to offset this. However, he does not believe this leads to a justification of federalism. He views federalism as a concession to Tamil nationalist demands and views such demands as aggravating the conflict.

The Sinhala liberal position has been the dominant constitutional perspective in Sri Lankan history during the postcolonial period. The three constitutions of postcolonial Sri Lanka - the Soulbury, the First Republican, and the Second Republican - are all based on this Sinhala liberal perspective. The Sinhala liberal perspective on constitutional doctrine in Sri Lanka has historically been associated with the United National Party. Nevertheless, this constitutional position tends to cut across political lines. It includes positions that range from individuals associated with the left to individuals associated with the Sri Lanka Freedom Party.\textsuperscript{167} The Sinhala liberal is a potential source of political liberal support for federalism in Sri Lanka. He does not support a unitary political arrangement, per se, but does so because he views it as the best arrangement for realizing individual equality. If federalism is better at realizing individual equality, then the Sinhala liberal ought to support it.

The Sinhala nationalist, however, is always opposed to federalism.\textsuperscript{168} The Sinhala nationalist supports a unitary state because he believes that it ensures the Sinhala

\textsuperscript{167} H. L. de Silva (1991) is representative of the Sinhala liberal basis for supporting a unitary state. The Sinhala liberal position I refer to is a constitutional doctrinal position, not necessarily a general political one. For example, the Minister of Constitutional Affairs and architect of Sri Lanka's first Republican constitution of 1972 was a Trotskyist, Colvin R. de Silva (see his "Safeguards for the Minorities in the 1972 Constitution," A Young Socialist Publication, 1987).

\textsuperscript{168} S. L. Gunawan (1996) is representative of the Sinhala nationalist basis for supporting a unitary state.
majority can dominate Sri Lankan politics. He believes the interests of Sinhalese should take priority over the interests of non-Sinhalese and the cultural interests of Sinhalese should take priority over their socio-economic ones. However, this does not imply complete disregard for the socio-economic interests of Sinhalese or the interests of non-Sinhalese. The Sinhala nationalist position has historically been associated with the Sri Lanka Freedom Party, after it came to power in 1956 on the platform to institute Sinhala as the only official language. Subsequently this political position cut across party lines, as the United National Party also adopted it in the competition for majority Sinhala electoral support. The electoral political pattern that has now emerged in Sri Lankan politics is that the government in power tends to adopt a Sinhala liberal approach towards resolving the ethnic conflict while the opposition tends to adopt a Sinhala nationalist one. There are small political parties, some influential Sinhala writers and militant Buddhist monks who have consistently adopted a Sinhala nationalist position.

My task is to convince the Sinhala liberal that his recognition of individual equality for Tamils will, in the light of the group bias Tamils have experienced in a unitary state, lead him to break with the Sinhala nationalist and support federalism

*The Tamil Positions.* Next we have the two Tamil positions - the liberal and the nationalist. They both support secession, but their rationale for doing so differs. The Tamil liberal believes in individual equality. He believes the way to resolve the conflict is to grant Tamils their independent state. He believes a separate state will provide Tamils with the political, economic and cultural security to address their interests. His support for secession does not rest on rejecting political equality for Sinhalese or on valuing Tamil cultural interests above their socio-economic interests. As a liberal his support for secession entails support for the basic liberties and the rights of other minorities in a separate Tamil state.169 The Tamil liberal views federalism as a concession to Sinhala nationalism. The Tamil liberal position is associated with the moderate Tamil party the Tamil United Liberation Front.

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169 The basic liberties here include freedom of association, freedom of expression, freedom of conscience and other political and civil liberties. See John Rawls (1993), Lecture VIII.
The Tamil nationalist supports a separate state because he grants priority to the cultural interests of Tamils over their socio-economic interests. And he grants priority to the interests of Tamils over the interests of non-Tamils. However, this does not imply a complete disregard for the socio-economic interests of Tamils or the interests of non-Tamils.

My task is to convince the Tamil liberal that his recognition of individual equality will, in the light of the violations of probabale violations of basic liberties in a separate Tamil state lead him to break with the Tamil nationalist and support federalism.

*The Left-liberal Position.* The left-liberal political position cuts across socio-economic, political party and ethnic lines. Left-liberal support for federalism stems from a political commitment to multiethnicity, basic individual freedoms and/or social equality. The individuals within this broad position do not, themselves, agree on the relative importance of these three considerations. Some may emphasize socio-economic equality, others may emphasize individual freedoms and still others, may simply emphasize ethnic diversity. Whatever their differences, they all view the current unitary political structure as contributing to the origin and continuation of the conflict and they oppose secession. They support a federal constitution as a means of simultaneously addressing Tamil political grievances, strengthening democracy and resolving the violent conflict. The adherents of this position come from all ethnic communities in Sri Lanka. This position is associated with the Communist Party, the Lanka Sama Samaja Party and many NGOs.

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170 My own position is that of a rootless left-liberal cosmopolitan of Tamil ethnic origin. My position combines a left-liberal political morality with a post-modern sociological sensibility. I support a political order based on socio-economic equality and respect for individual freedoms. Morally, I consider the individual as the basic unit of a political society. Politically, I conjecture that seeking to ensure individuals have basic freedoms with socio-economic equality leads to tolerant and humane political orders. Sociologically, I accept the post-modern claim that our identities - social, cultural and political - are invented. I seek neither to defend nor to analyze my left-liberal cosmopolitan position because my argument in favor of a federal solution in Sri Lanka does not rest on it. Rather I try to build a political liberal defense that goes beyond my left-liberal cosmopolitan rationale. I hope this defense will allow Sinhala liberals and Tamil liberals to also accede to federalism from within their somewhat more pure ideological and cultural positions.

171 The constitutional proposals of this left-liberal position is exemplified in “A Democratic Structure for Sri Lanka,” published by the Movement for Constitutional Reform, 1995. For a collection of essays that represent this position see Manikkalingam and Ratnayake (1995).
The moral argument for federalism proceeds in two steps. First, I show how addressing reasonable Tamil concerns in Sri Lanka leads to federalism from a unitary state. This distinguishes the Sinhala nationalist from the Sinhala liberal. The former remains with the unitary state, while the latter will lend support to a federal one. Second, I show how addressing reasonable Tamil concerns cannot lead to secession. This distinguishes the Tamil liberal from the Tamil nationalist.

III. From a Unitary to a Federal State

This section seeks to convince the Sinhala liberal that support for federalism is required by his liberal values. While federalism may be politically desirable in a culturally plural society, to require federalism we need to identify the specific conditions under which it is the primary means to ensure political equality. Linguistic pluralism, alone, is not such a condition. Political inequality due to linguistic pluralism can be addressed by a combination of local and provincial autonomy, special representation and bilingualism. It does not require federalism. What leads to federalism in a context of linguistic pluralism is the group bias of the unitary state against the minority language group.\[172\] Linguistic diversity, alone, can make federalism desirable, politically, but fails to make it required, morally.\[173\] What distinguishes the Sinhala liberal from the Sinhala nationalist is not the recognition of linguistic diversity in Sri Lanka, but the recognition of group bias against the Tamil minority within a unitary state. So the Sinhala liberal can support federalism without acquiescing to Tamil nationalism. Let me now go through the four considerations that will lead Sinhala liberals to federalism from a unitary state.

\[172\] Let me clarify that my argument is not a theory about the political conditions that justify federalism, generally. It is an argument about when federalism is justified under conditions of cultural diversity.

\[173\] It is important to clarify the distinction between political desirability and moral requirement. A political institution or policy may be politically desirable without being morally required. By this I mean that individuals may recommend or support a policy or an institution because it leads to outcomes that are desirable, such as a better environment, greater diversity, and better health. But the failure to implement these policies or institutions need not by itself lead to political inequality. They are not required to ensure that individuals are treated as equals.


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III.a. Local Autonomy.

There is a general liberal presumption in favor of local autonomy - purely local matters should be settled locally. There are many issues that are not morally closed, i.e., there exist a range of possible just solutions to a political problem. Local autonomy provides a way of choosing one by tapping into local knowledge. Local government services include the maintenance of streets and parks, the functioning of community centers for the youth, elderly and disabled, the disposal of waste and the provision of utilities. Some local governments have power over education and law enforcement. Local governments can tax residents for the purposes of providing these services and the functioning of the government. A creative and effective organization of local government services and support for the participation of different social groups can help turn cities and other local areas, such as villages and towns, into centers of cultural diversity and tolerance.\(^{174}\)

The impact of local government decisions is small in scale, minimizing the cost of mistakes. While decisions can be made autonomously at the local level of the municipality, the town, or the village, the basic constitutional structure of society provides the political context in which they are made. In the presence of a basic constitutional structure that is just, the risk that mistakes will undermine political equality is small. This is true the farther away we get from constitutional questions. Moreover, when political equality is violated or the local administration is corrupt, the central government has the authority and the power to intervene. Finally, the cost of exit is relatively low for individual residents who disagree with the policy decisions made by a local government.

Strong local government is thus an important Sinhala liberal strategy for addressing reasonable Tamil concerns. Sinhala liberals point to the relation between the intensification of the ethnic conflict and the weakening of local government structures over the past two decades. Beginning with the center-left United Front government of 1970-77, local autonomy in Sri Lanka has been steadily eroding.\(^{175}\) The United Front

\(^{174}\) For examples of this argument see Frug (1998) and Iris Marion Young (1991), “City Life and Difference.”

\(^{175}\) See Tressie Leitan (1990) for an excellent survey of the challenges to effective local autonomy in Sri Lanka. Leitan’s article focuses on the local government structures within a province, not the provinces
government saw the central state as the engine of economic development and political integration. They considered local autonomy an impediment to urgent social change, such as land redistribution and increased agricultural production. The United National Party government that was in power from 1977 to 1994 intensified this trend. Even when decentralization was attempted under these two governments it paradoxically led to greater centralization. The District Political Authority (DPA) under the United Front government and the District Development Council (DDC) under the United National Party government "brought about a greater degree of centralization, by institutionalising the power already enjoyed by the Members of Parliament and establishing central political leadership in each district."176 These schemes led to central government ministers and MPs participating and invariably dominating local government programs as ex-officio members and chairmen of the these local authorities. Diluting the power of local structures increased the challenges to effective political participation faced by everyone, not only Tamils.

Sinhala liberals argue local autonomy can go a considerable distance towards addressing the reasonable interests of Tamils. It provides Tamils with an important forum for participating in politics and deciding issues that directly affect them in their communities. Sinhala liberals do not reject the claim that Tamils may be especially disadvantaged by the dismantling of local government structures. Rather they view centralization as a general political trend that adversely affects all citizens, but whose impact on Tamils is compounded by linguistic differences. They argue local autonomy has not failed to address Tamil concerns. Rather there has been no local autonomy. Instead of designing newer and more extensive devolution mechanisms to address the concerns of the Tamil minority on the basis that local autonomy is insufficient, Sinhala liberals argue local autonomy should be strengthened, overall. Effective local autonomy makes federalism unnecessary.

III.b. Provincial Autonomy.

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176 Leitan, p. 9.
The liberal presumption in favor of local autonomy can be taken one step farther to provincial autonomy. This extension is quantitative rather than qualitative in nature. Sinhala liberals can support provincial autonomy on the basis that it increases efficiency. It allows a number of contiguous local governments to internalize their externalities, i.e., it provides a means by which they can co-ordinate the benefits and costs of programs that cannot be restricted to the boundaries of local governments, and benefit from economies of scale. And it forms an intermediate level of co-ordination between local governments with common areas of interest and the central government. While the principle of provincial autonomy here is akin to that of local autonomy, it differs in scale.

The criteria liberals use for delineating provincial (or local) boundaries include efficiency and tradition. These criteria can lead to boundaries that follow linguistic divisions, rural and urban divisions, geographic divisions as well as traditional administrative units. Liberal recognition of linguistic boundaries need not be based on any special recognition of ethno-linguistic difference over other forms of difference. It is only based on limiting the cost of interaction between the local or provincial government and citizens of a unit. Provincial units that correspond to linguistic ones can lower the cost of providing education, goods and services, and maintaining cultural traditions. The basis for drawing boundaries along linguistic lines, for example, does not differ from the basis for drawing boundaries along the lines of agricultural or fishing communities.

The first and only serious experiment with provincial autonomy in Sri Lanka was the Provincial Councils Bill of 1987. Here extensive devolution of power was granted throughout the country. The seven Sinhala majority provinces followed the traditional provincial boundaries, the two Tamil linguistic provinces - the Northern and Eastern ones - were merged into a single one.177 While the devolution of power under this scheme was the most extensive ever in Sri Lanka, it was still within a unitary state. The central legislature had the power to enact legislation applicable to the provinces either by a simple majority in parliament or for the purposes of implementing “national” policy.178

The Provincial Councils Bill was within the framework of a unitary state and thus consistent with the Sinhala liberal position. Sinhala liberals attribute its failure to two

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177 The Northern Province is predominantly Tamil, while the Eastern province is 40% Tamil, 30% Muslims (who speak Tamil) and 30% Sinhala.
sources. The first is the same trend towards centralization that led to the failure of local government. The second, related to the first, is the authoritarianism in Sri Lanka during the past three decades that led to the weakening of democratic structures.\textsuperscript{179} Sinhala liberals thus reject federalism as unnecessary because provincial autonomy is yet to be actually attempted, politically, for it to be rejected as a failure.\textsuperscript{180} Whatever the reasons for instituting federalism in Sri Lanka, it is still not required by political morality.

\textit{III.c. Special Representation.}

While local autonomy provides for Tamils to participate in politics and decide issues that directly affect them, it fails to ensure they are adequately represented at the center.\textsuperscript{181} The majoritarian system of territorial representation can place minorities at a disadvantage in electing representatives of their choice. Small swings in votes can bring large changes in electoral results. This leads to a huge discrepancy between the number of votes received by a party and the number of seats that it wins in parliament. This discrepancy can undermine equality of representation. This may be tolerable when there are no linguistic differences because a group can persuade representatives through other means.\textsuperscript{182} But in the presence of linguistic differences minorities lack of representation is compounded by informational failures and costs of dealing with representatives who do not speak their language. Under these circumstances electoral systems weighted in favor of increased minority representation are not only compatible with political morality, but may even be required by it. These schemes can include linguistically defined electoral units, proportional representation, or setting aside “minority” seats in parliament.

\textsuperscript{178} See Rohan Edirisinha and P. Saravanamuttu; Ketesh Loganathan, pp. 134-138 and pp. 144-150.

\textsuperscript{179} These two developments are captured by the following observation:

"...if one asks why, over the past thirty years or more, reform proposals have not been more extensively and effectively implemented, the answer which suggests itself is that successive governments have been unwilling to permit a close relationship between democratic control and the capacity to achieve substantial effects, which is the basis of a healthy local government system.” Peter Dawson, \textit{Implications of the District Minister System for District Administration} (Ministry of Planning and Economic Affairs, 1977), p.36, quoted in Leitan, p. 33.

\textsuperscript{180} These arguments are made by H. L. de Silva (1991).

\textsuperscript{181} Of course adequate representation can also be an obstacle at the provincial and local levels. But even in cases where minorities do not live in geographically contiguous units, this is less of a problem. The smaller the political sub unit, the easier it is to demarcate it along linguistically contiguous lines. At the national level, however, adequate political representation can pose a challenge to minorities.

Sinhala liberal support for these schemes can rest on the linguistic disadvantage faced by Tamil candidates and voters. Tamil candidates fail to reach Sinhala voters because they speak a different language. And the cost of reaching them has to be borne entirely by Tamils. This is also true of Tamil voters. These voters either have inadequate access to information about Sinhala candidates, whose appeals for reasons of efficiency and political expediency are targeted to Sinhala voters in a majoritarian electoral system. The point here is not that a majoritarian electoral system is unjust, per se, since all electoral systems are majoritarian. Rather it is that an electoral system can lead to injustice if it systematically disadvantages both the election of representatives preferred by a social group, and the access of members of this social group to representatives who have been elected.

Tamil concerns about adequate representation has been an important element in the Tamil political struggle. Tamils argued for special representation for minorities in the parliament of the newly independent Sri Lanka. In 1978, the introduction of a district based proportional representation scheme increased Tamil political representation significantly. More importantly it gave minority political parties greater bargaining power in forming governing coalitions. Since small swings in votes no longer assured either of the two major political parties the number of seats required to govern, they courted the support of minority parties, in general, and Tamil parties, in particular. This has increased Tamil influence on the political process, particularly in the central legislature.

Whatever the institutional mechanism necessary to remedy inadequate representation, liberals can support greater representation for a linguistically distinct minority. These mechanisms can vary, but their primary goal is to ensure minorities have adequate representation in the central legislature. Not only do central legislatures as the dominant law making bodies of a political community determine the laws of the country, but they also determine the political context within which local governments structure their daily politics. Like local autonomy, greater representation at the center for the Tamil minority addresses their concerns without requiring federalism. In fact the more

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183 See Jane Russell, Chap XII.
centralized the state, the stronger the argument for minority representation at the center, since a centralized state will have more power to enact laws throughout the polity.

III.d. Bilingualism. Local autonomy, provincial autonomy and special representation address the cost of interaction between minority citizens and local bodies, enables these citizens to participate in politics at the local level and have adequate representation at the national level. However, they do not address all the disadvantages suffered by minority citizens who speak a different language. Bilingual policies defray the cost faced by minority citizens in interacting with the state and the market. The cost of interacting with the state can range from filling out passport applications to language requirements for government employment. The cost of interacting with the market can range from restricted job opportunities to the challenge of reading labels and signposts.

The disadvantage of Tamil speakers is primarily related to the state rather than the market. While the state functions only in Sinhala, the market functions in all three languages. More accurately, there are three markets that each has a dominant language. The international sector related to finance, import and export, and manufacturing functions in English. Linguistically, Tamils are no more disadvantaged or advantaged here than Sinhalese. And the disadvantage here is associated with class more than language. While most middle and upper-middle class Sri Lankans, whether Tamil or Sinhala, speak English, most working class or lower middle class Tamils and Sinhalese do not. The requirement of a working knowledge of English in the international sector functions as an additional barrier to social and economic advancement in Sri Lanka for monolingual speakers of Tamil or Sinhala. The use of English, here, is more than simply a legacy of British colonial rule. English is now increasingly becoming the language of a global economy. Sri Lanka with a small domestic economy can hardly buck this international trend. The best it can do to rectify this disadvantage is to encourage and support English language education so as to increase social, economic and educational opportunities for working class and poor Sinhalese and Tamils.

184 By minority political parties I mean the political parties representing the Tamils, the Muslims, as well as the left political parties.
The local markets function in Sinhala in the predominantly Sinhala areas and in Tamil in the predominantly Tamil areas. While Tamils in predominantly Sinhala areas and Sinhalese in pre-dominantly Tamil areas can experience difficulties in interacting with local markets, these disadvantages are minimal and are easily overcome. There is a strong incentive on the part of manufacturers and merchants to provide goods and services in the language of the customers in order to increase profits.

Unfortunately, this incentive does not exist in the State sector. Bilingual state policies are necessary to address these linguistic disadvantages. There are three types of interactions that can lead to disadvantages: between Tamil speaking citizens and the central state, between Tamil speaking citizens and the local or provincial governments in predominantly Sinhala areas, and between Sinhalese speaking citizens and the local or provincial government in predominantly Tamil areas.\(^{185}\) These linguistic disadvantages can have an impact on a range of areas, from recruitment and promotion for jobs in the public sector and access to the courts, to filling out forms for passports and licenses, and following road signs. Political equality requires the central state and the local/provincial governments ensure that essential goods and services are provided in a language that is accessible to minority language speakers, and encourage the recruitment and promotion of those who can do so. Providing promotions and other incentives to those who speak Sinhala and Tamil, encourages bilingualism in the state sector and diminishes the disadvantages minority language speakers experience. Focus on linguistic ability, alone, rather than ethnic quotas, will lead to a more inclusive public sector, in a less restrictive manner. While individuals who are bilingual are more likely to be Tamil than Sinhala, there is nothing to prevent Sinhalese from acquiring knowledge of Tamil in the way Tamils study Sinhala.

Sinhala liberals can support local autonomy, provincial autonomy, special political representation and bilingualism to address the disadvantage Tamils face. These measures are seen not only as compatible with, but even required to treat all individuals as equals in a polity that is linguistically plural. However, they reject the claim that

\(^{185}\) There is a fourth interaction, that of monolingual English speakers with government authorities at all levels. I do not think this disadvantage is as significant because most monolingual English speakers are economically better off and can generally bear the burden of the cost of these interactions. And any linguistic disadvantages monolingual English speakers endure are offset by the class advantage they enjoy.
linguistic pluralism requires federalism. They see federalism as unnecessary in the presence of the above mechanisms. Under conditions of linguistic pluralism, alone, the failure of these mechanisms to address Tamil concerns is not viewed by Sinhala liberals as a sign that they are insufficient, but as sign that these mechanisms have never been given a real chance to work. To take the next step to federalism, a Sinhala liberal requires an additional condition - group bias within a unitary state.

III.e. Group Bias. Sinhala nationalists deny the unitary state leads to a group bias against Tamils, while Sinhala liberals recognize that such group bias cannot be reasonably denied, i.e., Sinhala liberals believe that reasonable people can disagree about whether the unitary state leads to group bias against Tamils. If group bias does not exist, Tamils cannot claim they are being treated unfairly within a unitary state provided other measures – local autonomy, provincial autonomy, proportional representation and bilingualism are in place. But if group bias does exist within a unitary state, it can systematically disadvantage the minority and lead to political inequality. Accepting that Tamils should not bear the brunt of the burden of a mistaken judgement about the existence of group bias in a unitary state, Sinhala liberals endorse federalism. All that is required for the Sinhala liberal to require federalism here is not to himself believe that such group bias exists, but to concede that those who do are not unreasonable. The Sinhala nationalist, however, rejects federalism because he is unconcerned about the disadvantages suffered by Tamils.

Left liberals argue there are many measures enacted by the central government in Sri Lanka that have disadvantaged Tamils. The following acts of parliament are usually proferred as examples: In 1956, the newly elected Sinhala populist coalition passed the Official Language Act, popularly known as the “Sinhala Only Act.” This act made Sinhala the sole official language of Sri Lanka, leading to a range of disadvantages for Tamil speakers. In Sri Lanka’s first republican constitution enacted in 1972, Buddhism, the religion of the Sinhala majority was granted official status. Giving state recognition to one particular religion was a symbolic downgrading of others. Since all Buddhists in Sri Lanka are Sinhala, this had a disproportionate impact on Tamils who are predominantly Hindu. In the 1970s an ethnically based quota system for admission to universities was
set-up that drastically reduced the percentage of Tamil entrants. In 1978, the government enacted the Prevention of Terrorism Act. This act was introduced to deal with the rising Tamil youth insurgency in the North. And finally, in 1983, parliament passed the VIth Amendment, following the anti-Tamil riots. This amendment made advocacy of a separate Tamil state unconstitutional and led to the resignation of all Members of Parliament representing Tamils.

Sinhala liberals respond that none of these policies were motivated by bias towards Tamils as a group. They argue that in these cases difficult choices had to be made by legislators under complex circumstances. While they concede that each one of these policies may have adversely affected Tamils, they argue this is true of most political measures, i.e., there is always some group that will be adversely affected by a political measure. Focusing on the adverse effects of a policy at a particular moment on a particular group as a reason for not enacting it, will preclude the enactment of most policies. Consider the Official Languages Act of 1956. English was the official language in practice prior to 1956. This adversely affected a considerable proportion of the Sri Lankan population - Sinhalese, as well as Tamils - who did not speak it. Dropping a colonial language and shifting to a national one was both politically and practically desirable. Politically, it was a means of shedding an important remnant of colonial rule and helping the transition to a more complete sense of independence. Practically, Sinhala as the national language spoken by an overwhelming majority - 70% of the population - was the only economically efficient choice. Sinhala liberals concede that Tamil speakers did suffer a disadvantage viz a viz Sinhala speakers when Sinhala was made the official language. But they argue this was no different from the disadvantage Tamils experienced with the English language.

Similarly, although most Sinhala liberals are discomfited by the special recognition granted Buddhism in the Sri Lankan constitution, they argue this symbolic measure has not practically affected the freedom of conscience and worship of non-Buddhists. They see the practical consequences of these measures as more critical than their abstract constitutional role. Sinhala liberals also point to other liberal political orders, such as the United Kingdom, where the Anglican Church has a special symbolic role as the state religion, and the Head of State - the Queen of England - is also the Head
of the Church. They argue that while such symbolic recognition of a particular religion over others is not morally desirable in a liberal society, it is not incompatible with the protection of the basic religious liberties.

Additionally, Sinhala liberals argue measures such as the ethnically based quota system that favored Sinhalese over Tamils in admission to universities and the Prevention of Terrorism Act were radical policy measures taken to address difficult situations. In the former case, they point to large asymmetry between Tamil entrants and Sinhala entrants to university as a reflection of the better schools in Tamil areas - a legacy of missionary education. The quota system helped remedy this asymmetry. In the case of the PTA - they argue that tough measures were necessary to deal with a violent separatist insurgency that threatened the political stability of the country. Finally, Sinhala liberals argue that advocacy of a separate state as unconstitutional is compatible with political equality. They point to countries like India with robust democratic systems where such advocacy has been deemed unconstitutional.\(^{186}\)

The left-liberal responds by rejecting the Sinhala liberal characterization of these policies as justifiable. For the left liberal, the "Sinhala Only" act did not simply overcome the legacy of a colonial language, but also relegated Tamils to a second class status, symbolically and politically. They argue that even if Tamils were at a disadvantage viz a viz English language, it was one they shared with fellow Sinhalese, i.e., they were equally unequal. With Sinhala as the only official language Tamils were placed at an instant disadvantage viz a viz Sinhalese. Similarly, the granting of a special status to Buddhism as the religion of the majority is illiberal. It weakens the commitment of the state to be neutral between different religions and conceptions of the good. And left liberals object that it can have practical consequences when it affects how judges interpret the constitutions in other areas.

The left liberal argues the quota system that limited Tamil university entrants was unfair. It only looked at one sphere of socio-economic advancement - education and the professions - while ignoring the dominance of Sinhalese in a number of other spheres - politics, the military and business. Whatever the disproportionate number of Tamil

\(^{186}\) Anti-secessionist amendments were written into the constitution in 1963 to suppress secessionist demands by regional parties.
students to gain entry to the universities in Sri Lanka, Sinhala students had other avenues of social progress not open to their Tamil counterparts. In addition, left liberals claim the Prevention of Terrorism Act enacted to repress the Tamil rebellion was particularly egregious in its violation of basic liberties. They point to the fact that the Sri Lankan state did not resort to special anti-terrorist legislation to deal with the Sinhala youth insurgency it faced in 1971, but used existing emergency regulations. Finally, the decision to make advocacy of secession unconstitutional is questionable at best. Even in the case of India, such a ban on the politics of separation was only made in conjunction with a number of policies that addressed minority linguistic claims. The most important of these policies was the creation of language based states with federal autonomy.\textsuperscript{187} Banning the advocacy of secession in India was not a stand alone measure that led to the deprivation of minority representation in India's parliament. For the left liberal these are all indications that group bias against Tamils rather than the reasonable differences are at work.

When faced with the left liberal response that these measures have adversely affected Tamils, the Sinhala liberal concedes there may be reasonable differences over these policies, while denying the presence of group bias institutionally. For Sinhala liberals these measures are, at worst, decisions made in a complicated context where there are reasonable differences. Since the differences are reasonable and a decision needs to be made, the group that does not secure its preferred policy cannot claim unjust treatment. In this way left-liberals and Sinhala liberals argue back and forth about whether or not these instances of legislation and policymaking are indicative of the group bias of a unitary system to the disadvantage of Tamils.

Demonstrating the group bias of a unitary system, does not require the left-liberal to challenge the Sinhala liberal contention that each of these differences may be reasonable. While each decision on its own may reflect a reasonable difference, what indicates group bias is that whenever there is a reasonable difference between Sinhalese and Tamils over a public policy, it is always resolved to the disadvantage of the latter.

\textsuperscript{187} "...regional demands (in India) must stop short of secession. All demands short of secession will be allowed full expression, but secessionist demands will be suppressed, if necessary, by armed force. On the other hand, once secessionist demands have been dropped, regional movements are permitted full expression." Paul Brass (1974), p. 17.
The political decision-making process thus works to select the preferred policy of the majority Sinhalese all the time. The claim of group bias is that the institutional circumstances, i.e., a unitary state under which Sinhalese pursue their interests can lead to a disadvantage for Tamils over time. And this disadvantage exists even when most Sinhalese do not themselves express, or even possess, hostility or dislike towards Tamils from a personal or a political perspective. Most Sinhalese may neither dislike Tamils personally nor believe they should be treated unequally as citizens, but can still pursue their interests in a way that adversely affects Tamil interests in routine politics. And it is this that the left liberal views as group bias. So, for the left liberal the very fact that reasonable differences are always resolved in favor of the Sinhala majority is itself a reflection of group bias within a unitary state and not an explanation of how there is none.

A persevering Sinhala liberal has one more response. While conceding the bias of a unitary state against Tamils, he argues that this bias can be rectified by implementing local autonomy, provincial autonomy, special representation and bilingualism. He argues that a federal state is justified only when implementing these measures fails to ensure political equality for Tamils. Since these measures have not been implemented, it is too early to say if federalism is required. But this Sinhala liberal response concedes the very claim that it challenges. Namely that the unitary state is indeed biased against Tamils because political efforts to implement these measures have failed for four decades.

Now the Sinhala liberal who recognizes Tamils as equal citizens must, at the very least, also concede that there are reasonable differences about whether a unitary state systematically disadvantages them. If there were no disadvantage then a unitary state with local and provincial autonomy, bilingualism and special representation would be sufficient to ensure political equality for Tamils. But if there were disadvantage within a unitary state, this would not be enough. Tamils would have to bear the burden of a mistaken judgment about the group bias of a unitary state, leading to political inequality. This is a gamble the Sinhala liberal would not expect Tamils to take. The Sinhala liberal now cannot reasonably reject reform of the unitary state on the basis that it is simply a concession to Tamil nationalism. What separates this Sinhala liberal from the Sinhala nationalist is the willingness to reform the unitary state on moral grounds. The Sinhala
nationalist rejects this.\textsuperscript{188} When there are reasonable differences over group bias towards Tamils in a unitary state, federalism becomes morally required to ensure Tamils are treated as political equals.

IV. From a Separate to a Federal State

The previous section addressed the political morality of the choice between a unitary state and a federal one. Political equality required that we choose the federal state over the unitary one in Sri Lanka. But does political equality require that we choose a federal state over a separate one? The same factor that led to Sinhala liberal support for federalism over a unitary state - group bias within a unitary system - can also lead the Tamil liberal to support a separate state over a federal one. To confirm federalism as our choice we need to demonstrate why it is morally superior to separation. I examine whether liberalism can justify secession based on “national self-determination.” I distinguish Tamil liberal support for secession from Tamil nationalist support for it. And I argue the Tamil liberal can support federalism as an instantiation of political equality for Tamils rather than as a compromise with Sinhala power.

I outline the simple liberal argument for secession based on national self-determination and then the complex liberal one. The simple liberal argument is based on extending the libertarian idea of individual consent to the nation.\textsuperscript{189} The complex liberal argument is based on the claim that a national culture contributes to the well-being of an individual and secession can strengthen it.\textsuperscript{190} There are six objections to the complex

\textsuperscript{188} There is another objection to federalism. Namely, that it was Tamil prejudice towards Sinhalese that provoked bias towards Tamils. Granting federalism where there is mutual prejudice that is a product of minority hostility may provide perverse incentives to minority groups who wish to secede or get their own federal state to incite majority hostility. This objection does not hold. First minorities are unlikely to gain from instigating prejudice or hostility. Second, federalism is granted here not simply because a minority incites the majority leading the state to suppress it, politically. In this case suppression would be justified. What justifies federalism here is the action of the majority in responding with hostility or prejudice, not any majority response to minority incitement. Using this criteria provides incentives for the majority to refrain from generating hostility, just as it provides an incentive to minorities to refrain from utilising it for political purposes, in the absence of such majority hostility. Furthermore under conditions of mutual prejudice, the minority will always be at a disadvantage. Federalism thus becomes morally required to ensure that a minority can protect itself against majority prejudice.


\textsuperscript{190} The complex liberal argument is mainly derived from Caney (1997). But it also incorporates elements of Rachel Brown (1997) and Margalit and Raz (1990).
liberal argument for secession. First, a national culture cannot be clearly defined. Second, access to national culture can detract from individual well-being. Third, secession restricts access to their national culture for regional minorities. Fourth, secession restricts access to other national cultures. Fifth, secession fails to strengthen a national culture. And finally, even if a separate state may strengthen a national culture that contributes to the well-being of individuals, liberals agree that secession is morally impermissible if the seceding state fails to uphold basic civil and political rights. A separate Tamil state in Sri Lanka is likely to be under the domination of the ultranationalist Tamil Tigers. Given their history of suppressing dissent, such a state will not be democratic. It will recognize Tamils, only as Tamils. They will have no political freedoms there. And the Tigers will systematically violate the rights of other minorities. The moral argument from liberalism for a separate Tamil state thus breaks down. The Tamil liberal faced with the prospect of an illiberal separate state chooses federalism, while the Tamil nationalist goes along with separation.

The Simple Liberal Argument For Secession. The simple liberal argument views consent as the basis for the legitimacy of a political order. A state has political authority over an individual only if she consents to it. When an individual withdraws consent from a state, it ceases to have political authority over her. Extended to a collection of individuals this argument is used to justify secession. A group of individuals no less than a single individual has a right to withdraw consent from and exit a polity. When they exit a political community they can either join another or form their own. A group of individuals that wishes to establish its own political community has a right to do so. If the group shares a common culture, simple liberals justify secession on the basis of national self-determination.191 While nationalists use the simple liberal argument to justify the secession of national groups, the simple liberal argument is not confined to national claims alone. Under this argument any group may secede. This group can be a

191 Following quote from John Stuart Mill captures the use of the simple liberal argument to justify nationalist secession. "Where the sentiment of nationality exists in any force, there is a prima facie case for uniting all the members of the nationality under the same government, and a government to themselves apart. This is merely saying that the question of government ought to be decided by the governed."
city, women, workers, capitalists, or communists. The only limitations imposed on secession by simple liberals are the practicalities of creating two viable states out of the single original one and the financial costs of secession. If two viable states can be created and the group seeking secession bears the cost imposed on those who remain when it secedes, then preventing secession is unjust. 192

A group, however different from the rest of the political community, does not withdraw consent from a political order and secede for no reason. A group secedes because it has political differences with the present state or those who control it. Groups demand secession when they believe these differences cannot be resolved either to their advantage or in a just manner within the present state structure. For example, the Tamil demand for secession was first politically raised by an influential Tamil party almost three decades after Sri Lanka’s independence from Britain. 193 Initially, Tamils did not support even the weaker claim of federal autonomy. They supported parties that sought greater co-operation with the central state. It was only after the escalation of political differences and what Tamils viewed as the failure of successive governments to resolve them in a just manner that Tamils supported a political party seeking separation. The point is not that this justifies separation, but that even where there is a clear ethno-linguistic difference between groups the demand for separation does not arise from the difference, alone. It arises from unresolved political conflict.

Once we acknowledge the demand for separation invariably stems from political conflict, the simple liberal argument begins to unravel. A group seeks to secede because the state fails to resolve the group’s political claims in a just manner. The group that remains does not see secession as simply a consequence of the failure to resolve political claims, but as an unjust way of resolving them. They resist secession for the same reasons there were political differences to begin with. At best, those who remain see the threat of secession as an attempt to hold up the state in order to wring unjust concessions. At worst, they see it as an unjust resolution of the conflict. Either way, resolving the morality of secession requires resolving the morality of the political conflict, itself.

Secession is justified only if the moral claims of the secessionists are. It is not justified simply because a group chooses to secede. Evaluating the political moral merits of secession requires evaluating whether the single state is compatible with a political order that treats all citizens as equals, including those who are members of the seceding group. What matters is the justice of the state not the consent of the secessionists. Thus political differences within a single state lead to political differences over separation. And to resolve the justice of the latter, we need to resolve the justice of the former. The simple liberal argument fails to consider this.

The simple liberal can counter that this critique of secession confuses two distinct questions. The first is political differences between the secessionists and those who remain about how best to resolve a conflict within a single state. The second is political differences about how best to resolve the justice of separation. The two groups can disagree about the justice of resolving their differences within a single state (say whether it can be resolved through bilingualism or federalism) but agree about the justice of separation - the viability of the states and the cost of secession. While such an agreement may be logically possible - in that the secessionists and those who remain may theoretically agree to the just division of property, territory, population and the structure of institutions that can constitute two just and viable states - it seems politically implausible. If the secessionists and those who remain cannot agree about the just terms of a single state, it seems implausible that they can agree about the just terms of separation. Now the simple liberal responds that the point is not that the two parties to the conflict disagree about the just terms of separation, but that such terms exist. And that precisely because such terms exist, the resistance of those who remain to secession is unjust, if the secessionists are willing to abide by those terms.

At this point however the simple liberal, whose argument is premised on consent, concedes too much. If the justice of the secession is based on the conditions of separation and not only on consent, then it is not clear why consent is necessary at all. And further, if just conditions can be found within a single state, it is equally unjust for the secessionists to seek secession. Once just terms of separation (or unification) are

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193 Of course there have been individuals who have advocated secession for Tamils all along. But they never received much political support from Tamils during the first three decades of independence.
worked out, it is not clear what work, if any, consent does. Even in the simplest case, where two groups mutually consent to separate, it is the morality of the terms of separation that justifies it, not the consent, per se. Consent is relevant only when both arrangements - secession as well as a single state - are equally just. If there are reasonable differences over which one ought to be chosen, the secessionists desire to form their own state can justify secession. Those who remain cannot reasonably reject secession as unjust.194 However, if those who remain win out in the political struggle, the secessionists cannot reasonably reject a single state as unjust. Ultimately, the simple liberal argument obscures rather than clarifies the political moral criteria for secession.

In Sri Lanka, some Tamils mistakenly justify secession on the basis of the simple liberal argument. Morally, they argue the Tamil desire for a separate state is sufficient to justify it. Empirically, they point to the election of 1977, when the Tamil United Liberation Front (TULF) won a majority of the parliamentary seats in the Tamil areas on a secessionist platform, as an expression of this desire. There are many factors that mitigate the continued use of this election to evaluate contemporary Tamil opinion. First, it is not clear whether in 1977 Tamils actually wanted to secede or simply supported separation to strengthen the bargaining power of Tamil representatives in negotiations with the Sri Lankan government. Second, Tamils have since voted for political representatives who have won seats on the basis of supporting a political solution within a united Sri Lanka, not on the basis of separation. Third, there have been several critical political developments in the two decades since the 1977 election, raising doubts about its validity as a sign of current Tamil support for secession. Still, the failure of the simple liberal argument indicates that even if a majority of Tamils do desire a separate state, this alone is an insufficient basis to justify secession. At most, it is an indication of Tamil disaffection with the Sri Lankan polity. It is not an indication that this disaffection is justified or, even if it is justified, that it warrants secession. Justifying secession, in general, or in Sri Lanka, in particular, must be made on a different basis. This brings us to the complex liberal argument for secession.

194 Of course they can still reject separation as politically undesirable - economically inefficient or decreasing diversity.
The Complex Liberal Argument for Secession. I evaluate the complex liberal argument for secession from national self-determination by comparing the following two situations. In the first, an individual lives in a liberal multi-national state. Her membership of a national culture furthers her well-being. It provides her with a range of choices as a well as a social basis from which to make them. She has access to her culture through bilingual political policies and federal constitutional structures. She also enjoys the full array of basic liberties. In the second, an individual lives in a liberal nation-state with her co-nationals. Her own national culture is further strengthened. She still enjoys the full array of basic liberties. Now the complex liberal argument is that the second situation promotes an individual’s well-being more than the first. Under these circumstances secession is prima facie justified unless the new state violates the rights of its minorities or fails to uphold international obligations. According to this argument, a Tamil liberal faced with the choice of a united Sri Lanka with bilingual policies and a federal structure or a separate Tamil state should, ceteris paribus, opt for the latter. There are six left-liberal objections to this complex liberal argument for secession.

a. A national culture cannot be clearly defined.

The first left-liberal objection is that a national culture is fluid, not fixed. A national culture is a conscious political construct not a natural cultural one. Nationalist politics create national cultures, not vice versa. A national culture is defined less by the continuity of historical and cultural practices and more by the contingent outcomes of political struggles. Any definition of a national culture is either a snapshot of a changing national cultural landscape, an impasse over competing interpretations of a national culture or worse, an attempt by one group to impose its interpretation over others. Thus secession leads to the entrenchment of a contingent definition of national culture; one that is often of the dominant subgroup within a national cultural community. This has critical implications for secession. If it is not clear precisely what the national culture is, it is not clear if secession strengthens or weakens it. This lack of clarity in the definition of a

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195 There are several arguments for secession that do not depend on claims of national self-determination, such as unfair distribution or the deprivation of basic liberties. I do not consider them here. For a survey see Allen Buchanan (1991, 1997).
culture also extends to demarcating membership of a group. Since secession requires defining precisely who the citizens of the new polity are, the uncertainty over who is a member of a national culture makes secession less desirable.

For the left-liberal all of these objections apply to the Tamil claim of secession in Sri Lanka. Tamil national culture is not fixed, but fluid. There is no single interpretation of what it means to be Tamil that is common to all Tamils. And even if there were, such an interpretation would only be transient. What it means to be a Tamil today is distinct from what it meant to be a Tamil a hundred, fifty or even ten years ago. Even the very concept of a common Tamil national culture only emerged in the late 19th and 20th centuries from a series of political struggles. Furthermore, there is simply no set of common objective cultural characteristics that all Tamils share. Initially, Tamil culture was considered an attribute primarily of upper-caste Hindu males. Lower castes were excluded from membership in the Tamil cultural community. Their exclusion was justified religiously on the basis they were ritually impure, as well as politically and economically, on the basis they were slaves or indentured workers.

Overtime this narrow definition expanded. In the first three decades after independence a Tamil came to be defined more inclusively in Sri Lanka. A Tamil was simply considered a Tamil speaker. Tamil national culture was then defined linguistically rather than ethnically or geographically. It included many “Tamil” subcultures: the Muslims, the Hill-Country Tamils, the Northeast Tamils and the Southern Tamils. Since the seventies the definition of a Tamil has once again become more and more exclusive. First it excluded the Hill-country Tamils and Muslims, and then the Southern Tamils. \(^{197}\) Today this definition is the consequence, not simply the cause, of a separatist Tamil politics. In short, Tamil national culture is no different from any other. It is fluid, historically discontinuous, and the contingent outcome of political struggles over shifting interpretations. It is not natural.

While conceding the left liberal objection that Tamil national culture is invented, i.e., the contingent outcome of political struggles over power, the Tamil liberal contests

\(^{196}\) I use the term politics here in the broad sense, i.e., to include struggles over state, economic, and cultural power.

\(^{197}\) For a insightful discussion of how this narrowing of the Tamil identity is intrinsic to the logic of nationalism see Qadri Ismail (2001).
the conclusion that it cannot be defined clearly just because it is. Unlike the Tamil nationalist, the Tamil liberal has no stake in defending the Tamil nation as natural, historically continuous and politically pristine. The left-liberal’s anti-naturalistic critique of national culture, in general, and Tamil culture, in particular, applies to the Tamil nationalist not the Tamil liberal. The Tamil liberal defends Tamil national culture not because it is historically natural but because it is socially useful. Having access to Tamil culture enables a Tamil to do things that he would not otherwise be able to do. Certainly, having access to any other culture will also enable him to do many of these things. But the point is that he has no access to any other. This is not to deny that he has potential access to, say, Sinhala national culture. But the cost of turning a potential of access into the reality of access is uncertain.

The Tamil liberal refuses to shoulder the burden of the social cost of this uncertainty. But the Tamil liberal’s refusal is not based on the inherent superiority or historical authenticity of his culture over that of any other. Nor is it, like religion, based on the moral value of an individual’s relationship with his culture. It is only based on social value of a national culture; a social value that leads the Tamil liberal to incur a high cost in psychological and material terms when he transfers from a culture he is familiar with to one with which he is not. He grants that the Tamil community is indeed contingent. But to him all communities are. So the Tamil liberal welcomes rather than rejects the anti-naturalistic critique of Tamil national culture. He enlists this critique in his struggle against the Tamil nationalist who makes more grandiose claims about Tamil national culture. He sees the grand claims of the Tamil nationalist, for whom a national culture is an end, in itself, as undermining the liberal claims about national culture as a social means for individuals to achieve their ends, whatever they turn out to be. Ultimately, the Tamil liberal wishes to strengthen Tamil national culture through secession because it helps him better cope with the world.

While the Tamil liberal concedes or even welcomes the left-liberal’s anti-naturalistic critique, he resists the left-liberal’s conclusion that the mere fact of a national

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198 The Tamil liberals defense of the contingency of the Tamil community is akin to (albeit not identical to) Rorty’s defense of the contingency of the liberal community. (“The contingency of a liberal community” Ch. 3, in Rorty 1989). It is not identical because the Tamil liberal is a universalist to the extent that he seeks to justify his defense of the Tamil community and its value in his life to non-Tamuls.
culture's constructedness makes it impossible to define. The Tamil liberal argues that whatever changes the Tamil national cultural community may undergo, there always is a particular definition of what it is. Just because Tamil national culture today differs from what it was fifty or even ten years ago, does not mean that we cannot define what it is today or what it was in the past. Defining a national culture is a challenging task; it is one that is not easy nor always desirable. Still, it is, in theory, no more nor less challenging than defining the community of women or that of workers. Pushing the left-liberal argument about the radical constructedness of communities one step farther, the Tamil liberal argues that all communities are constructed then the same concerns about definition that apply to a national culture also apply to women and workers. The Tamil liberal charges that the same left liberals who reject secession on the basis that a national culture cannot be defined, endorse workers' and women's rights on the assumption that it can be.

There are two left-liberal objections to this Tamil liberal response. The first is that a left-liberal does not oppose all institutions that address the national cultural concerns of a Tamil liberal, such as federalism and bilingualism, she only opposes secession. The second is that the left-liberal objects to secession, in general, not only in the case of Tamils. The left-liberal does not endorse secession if the rights of only some workers and women can be strengthened by it. For the Tamil liberal, however, these responses concede precisely what he claims - the value of the social content of a national culture as well as the possibility of defining its membership. After all, he queries, if it is possible to define a Tamil national culture in order to grant federalism and bilingualism, why is not possible to define one that facilitates secession. Similarly, he argues that the question of secession as a means of addressing women's or workers rights simply does not arise for social reasons, not for moral ones. Women or workers as social entities are not mutually connected through a common culture in a way that makes secession a viable option.199 The point is not that workers or women do not share a common culture - they may. Still,

199 See for example the distinction Margalit and Raz (1990, pp. 442-447) draw between Tottenham Football Club supporters or the fiction reading public and peoples or nations.
whatever they share culturally or the interests they pursue materially simply cannot be strengthened through a separate sovereign state.\textsuperscript{200}

Ultimately what makes a separate state a more viable political institution for a national cultural community and not for workers or women, may simply be the contemporary state system of sovereignty based on territory. Even if national cultures rarely inhabit a common territory, and most territories have many cultural communities, it is always possible to primarily, if not exclusively, locate many members of a national cultural community within some part of a territory. The possibility of locating a national cultural community within a territory may vary according to the characteristics of a national culture. Whatever the disagreements about the characteristics of a particular national cultural community that makes them less or more viable candidates for secession, there is no disagreement that these characteristics are not found among workers or women. Tamil liberals may, along with left-liberals, lament the limitations of the contemporary state system based on sovereignty over territory.\textsuperscript{201} However, in the absence of an alternative, they see no reason why their claims of secession should be rejected merely on the grounds that it is not viable for groups, like women or workers, who do not inhabit a particular territory.\textsuperscript{202} Tamil liberals do not argue that the claim of national self-determination always justifies secession, nor do they argue that it is the only claim that justifies secession. They only argue that it justifies secession when it leads to the strengthening a national culture.

In Sri Lanka, then, Tamil liberals argue that a separate Tamil liberal state can be established in the predominantly Tamil Northeast. They argue that such a state will strengthen Tamil culture better than a united Sri Lanka with federal autonomy and bilingual policies for Tamils. And if this liberal state leads to the strengthening of Tamil culture while protecting the basic liberties and rights of other minorities, left-liberals cannot reasonably reject it. At this point, Tamil liberals view any continued left-liberal resistance to secession as a conservative defense of the prevailing Sri Lankan state, rather

\textsuperscript{200} Just to clarify, I do not want to deny the possibility of a liberal workers’ state. But this state would not be created by secession, but by revolution. The former case requires workers to leave both capitalists and capital behind and proceed to their own state. The latter involves workers expropriating the capital of owners and hiring them as managers.

\textsuperscript{201} For an insightful sketch of an alternative to the contemporary system of sovereignty see Thomas Pogge (1992).
than a left-liberal concern for the interests of individuals. This leads to the next left-liberal objection.

b. A national culture can detract from individual well-being.

The second left-liberal objection is that all aspects of a national culture do not contribute to an individual’s well-being. A Tamil woman clearly requires access to the Tamil language to pursue her goals and interests if she only speaks Tamil. She may also benefit from Tamil literature and certain Tamil cultural traditions. Being familiar with other Tamils and their ways, she may prefer public and private environments where Tamil culture is dominant. But this is not always the case. Women in Tamil culture can suffer discrimination at a number of levels in Tamil society. While this discrimination exists in a range of social practices, it is particularly apparent in customary Tamil marriage and property relations. This is partly due to its codification in the system of personal law in Sri Lanka which has never been challenged by male-dominated Tamil political parties. A Tamil woman is expected to provide her partner with a dowry in land and cash. Worse, after marriage, a woman cannot alienate immovable property without the consent of her spouse. Given the widespread practice of arranged marriages these traditions and laws have led to unequal property rights for Tamil women. It is hard to see how greater access to this aspect of Tamil culture can be beneficial to Tamil women.

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203 For example, the leading Tamil moderate party in parliament - the Tamil United Liberation Front in Sri Lanka has called for “constitutional and legal reforms in Sri Lanka to ensure conformity with international legal obligations in ....the Convention on the Elimination of Discrimination Against Women, and for a program to ensure that women have full and equal enjoyment of human rights” (Manifesto of the Tamil United Liberation Front for the Tenth Parliamentary Elections of 1994). However, it has failed to seek the elimination of unequal property rights for Tamil women. This reform could be made with little political effort. In Sri Lankan parliamentary practice the reform of customary laws that affect a particular community is rubber stamped by parliament if a majority of the representatives of the community concerned supports it. Thus granting Tamil women equal property rights simply requires the support of the majority of the Tamil representatives in parliament.
204 In her discussion of customary law in Sri Lanka Ramani Muttetuwegama (1997, p. 24) makes this point about minority ethnic rights, more generally: “...in the discussions on retention of minority rights, the interests of women seem to have become invisible and the discriminatory aspects of traditions, vis a vis women remain unacknowledged and unaddressed. The question arises whether the rights of women within a particular minority group must always be subordinate to the rights of the group to be recognized as a separate entity, thus creating a “minority” within the group.”
Similarly, Tamil society in Sri Lanka has traditionally imposed severe social disadvantages on members of oppressed castes. These disadvantages have included segregation in public facilities, taboos on inter-caste marriage, limitations on the ownership of land, among others. While many of the more blatant forms of discrimination have been eradicated, there is still significant social prejudice and stigma attached to membership in oppressed castes. It is hard to convince members of oppressed castes in Tamil society that simply strengthening Tamil culture will contribute to their well-being. Support for the struggles of oppressed castes in Tamil society emerged from sources outside Tamil culture - the Communist Party and the Colombo government. Thus supporters of caste hierarchy in Tamil society were also some of the first supporters of Tamil nationalism.205

Now a Tamil liberal has two responses to this left-liberal objection to secession. The first is that just because some aspects of a national culture are bad does not imply that all aspects are. Many aspects of Tamil national culture are beneficial to an individual and it is necessary to distinguish between those that are and those that are not. But this Tamil liberal response grants too much to the left-liberal objection. After all, the initial justification for secession was that national culture, in general, is beneficial to individuals, not just that some aspects of it are. At this point the prima facie presumption in favor of secession the Tamil liberal seeks is undermined. Secession becomes justified only if it strengthens those aspects of Tamil national culture that are beneficial to individuals and it is not justified if it strengthens those aspects of Tamil national culture that are detrimental to an individual’s well being. So whether or not secession is justified depends on what impact secession will have on liberalizing Tamil culture. Left-liberals

205 See Bryan Pffafenberger for a discussion of how caste conflict in Tamil society spurred the moderate Tamil political party to mobilise along nationalist grounds. Discussing the struggle by oppressed castes to gain entry to a Hindu temple at Maviddaparam in the Tamil North of Sri Lanka from which they had traditionally been excluded, he observes: “Yet the more the intercaste crisis deepened, the more the leading Tamil political party, the Federal Party (FP), found itself tempted to direct attention away from the Jaffna Peninsula and toward issues around which all Tamils can be politically united. If the party expressed support for either side in the Maviddaparam fracas, it would lose support. In the end, the FP chose to direct public attention away from the conflict by emphasizing the Colombo government’s insensitivity to Tamil Hindu concerns, which was manifested by several untimely policy decisions before and after the Maviddaparam conflict. Without denying that Tamils had every right to regard the government’s decision as insensitive (at best), one can still chronicle how FP politicians had yet one more reason to construct a politics of defensive nationalism -
argue that a federal Sri Lanka with bilingual policies is more likely to both strengthen liberal aspects of Tamil culture and ensure political equality for all Tamils than a separate state. Tamil liberals may still disagree. Continued Tamil liberal support for secession then depends on the empirical conjecture that not only is Tamil culture strengthened, but liberal reform in Tamil society is also hastened by secession.

c. Secession restricts access to their national culture for regional minorities.

The third left-liberal objection is that even if secession increases access to their national culture for some individuals it restricts access for others. Tamils living in predominantly Sinhala areas will have less access to their national culture after secession.

Separation forces Tamils in Sinhala majority regions to choose between exit and assimilation. Federalism precludes the need to make such a stark choice. It also lowers the cost of either option by lessening the stakes. In a federal Sri Lanka, a Tamil living in a predominantly Sinhala region who wishes to enjoy the benefits of her national culture may move to a predominantly Tamil region. If the benefits she derives from living amongst her co-ethnic is less than her initial expectations, she can always return. In returning she need not give up all access to her national culture. This is equally true of Sinhalese living in Tamil majority regions. Separation also restricts the access of Sinhalese living in Tamil majority regions to their national culture. Separation forces them to choose between exit and assimilation, while federalism helps them to avoid making such a stark choice. Thus even if separation increases access to their national cultures for some Tamils (and Sinhalese) it reduces access for others.\(^{206}\) A Tamil liberal may concede that separation reduces the access to their national culture for Tamils living outside the predominantly Tamil regions of the Northeast, but may still insist that it

\(^{206}\) Here I follow the point about non-contiguous minorities in Sri Lanka made by Darini Rajasingham-Senanayake:

"The idea of "local minorities" and "local majorities" confounds the likes of the Sinhala Commission which believes in the tyranny of the majority, the LTTE which confuses Eelam with paradise, and liberals who equate devolution with Utopia. The notion of local minorities defeats the logic of ethno-nationalist chauvinism and forces us to think empirically through other blue prints for peace turned recipes for war." "After Devolution: Protecting Local Minorities and Mixed Settlements," in Pravada, Vol. 5 No. 4&5.
strengthens Tamil national culture, overall. But even if it does, the left-liberal objects that it can restrict access to other cultures.

*d. Secession restricts access to other national cultures.*

Experiencing other cultures and learning from them increases an individual’s well-being. Secession restricts this. Sinhalese in a Sinhala state and Tamils in a Tamil state will have fewer opportunities to interact and learn from each other’s cultures. This interaction benefits individuals by creating an environment that is diverse and provides them with a greater menu of choices.

The Tamil liberal in favor of secession responds that this objection either depends on a sectarian view of liberalism or is not decisive. Consider the left-liberal objection to secession from the argument for a diverse environment. An individual has greater appreciation of the merits of her culture (or another) if she is able to compare different cultures. Individuals may differ in their conclusions about the merits of cultures or aspects of cultures. Appreciation of these merits may or may not influence an individual’s choices. For example, she may appreciate some aspects of another culture—literature or art—but may still opt for her own, either because it is hers or because it is more accessible. But the very fact she appreciates the merits of different cultural beliefs and practices and not simply follows her culture makes her life more worthwhile. By diminishing diversity secession restricts the prospect of individuals leading worthwhile lives.

Unlike her argument, mine rests simply on the presence of local minorities rather than on the claim that they are mixed or hybrid. Whether they are “hybrid” or “purely” Tamil or Sinhala, separation limits their options.

207 Consider the following quote from one Tamil liberal who appears to endorse this position.

“In the process (of protecting the Ceylon Tamil identity) it has become necessary to write off the ‘Colombo (Tamil) man.’ The ‘Colombo man’ has one of two alternatives, either to remain in Colombo and survive, facing all the uncertainties of an unpredictable future, or return to the (Tamil majority) homeland and start life anew.” A. J. Wilson, “The Colombo Man, the Jaffna Man, and the Batticaloa Man,” in Manogaran and Pfaffenberger, eds, *The Sri Lankan Tamils: Ethnicity and Identity*, 1994, cited in Ismail (2001). This position is, however, becoming less and less plausible with the increasingly large numbers of Tamils who now live outside the predominantly Tamil Northeast. Some estimates suggest that most Tamils now live outside of these regions.

208 The reader primarily interested in the case of Sri Lanka may skip the next few paragraphs and begin at the penultimate paragraph of this section “Imagine two states, France and Holland, each with its own culture.”

209 Here, I examine Rachel Brown’s (1997) argument against secession from diversity.
The Tamil liberal responds the value of living a worthwhile life in this sense is not a requirement of political morality, but simply a philosophical desire of left-liberals. To be a decisive objection to secession living such a life needs to be a requirement of political morality. It becomes a requirement of political morality only if political institutions are designed on a sectarian basis, i.e., on the basis of liberal autonomy as a comprehensive doctrine. This violates liberal neutrality.

The Tamil liberal grants that culture has social, not moral content. His defense of secession based on the sociological value of culture differs from the Tamil nationalist's defense based on its moral value. The Tamil liberal does not deny that culture can simultaneously have social and moral value. But the justification for secession rests on its social value and the greater benefits it brings Tamils who live in their own state. Its moral value, like the moral value of any religious or moral doctrine, is expressed through the basic liberties. The Tamil liberal's defense of the basic liberties is no different from that of the political liberal. He defends the basic liberties on the basis that all societies consist of individuals with diverse and incommensurable moral doctrines. The only possible way of reconciling moral pluralism with social unity is to ensure state neutrality with regard to comprehensive moral doctrines. But the left liberal objection to secession based on the intrinsic value of diversity fails to do so.

The intrinsic value of diversity argument indicates that an individual who chooses a moral doctrine after appreciating the merits of competing moral doctrines leads a more worthwhile life than one who does not. While left-liberals are quite free to think that this is so, any attempt to structure political institutions on this basis can lead to the violation of liberal neutrality. It will require a policy or structure that encourages the beliefs and practices of autonomously chosen conceptions of the good over ones that are not. This is a justification of political institutions based on a conception of the good, albeit a second order one. Any policy devised to conform to this will either be impractical or lead to tyranny. The liberal diversity based presumption against secession is precisely such an argument that seeks to reject a political structure - a separate state - based on a conception of the good - liberal autonomy.

\[210\] See Brian Barry's (1996, 128-133) discussion of liberal autonomy.
The left-liberal response is that the Tamil liberal has got it wrong. Left-liberals do not endorse the view that individual’s who compare and contrast their moral doctrines and choose them on their merits lead more worthwhile lives. Rather they endorse the view that individuals who make other choices, i.e., aesthetic, cultural and social choices, not moral ones, on this basis do. But if appreciating the merits of an individual’ most critical choice, their moral choice, is not relevant to the liberal diversity presumption against secession, it is not clear why appreciating the merits of other choices should be. Ultimately, the left-liberal diversity argument is just that; it is a diversity argument. Given two political arrangements compatible with political equality, liberals have a general presumption in favor of the less restrictive one. If a single state as well as two separate ones are both compatible with political equality, left-liberals favor the single state because it is less restrictive. Citizens have a greater menu of choices, ranging from where to live and work, to what kind of literature and art to enjoy. Similarly, the diversity argument suggests that two neighboring liberal states is less desirable than a single federation.

Imagine two states, France and Holland, each with its own culture. These states then unite federally to form Frolland. Assume that in uniting they are able to maintain the same levels of socio-economic welfare and individual rights, and there is no decrease in cultural diversity. Now Frolland is more diverse than either France or Holland was. Left-liberals will prefer Frolland to the two separate states of France and Holland. But it would be wrong to do so on the basis that the citizens of either Holland or France lead less worthwhile lives than those of Frolland. Rather, left liberals can do so simply on the basis that the choices of citizens of Holland or France are more limited than those of the citizens of Frolland.

A persevering Tamil liberal secessionist responds that enjoying the diverse cultural products of an increasing global economy no longer requires living within common borders. Trade, television and transnational organizations ensure that

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211 Of course French liberals and Dutch liberals need not.
212 Liberals do not endorse the view that increasing one’s set of choices is always beneficial. The liberal case for banning slavery, i.e., preventing people from selling themselves off, is a classic example of when liberals support restricting individual choices. See Thomas Pogge (1989). Sometimes restrictions can also increase one’s set of choices in "tragedy of the commons" type situations. For an application of this to international borders see Brian Barry’s (1992) criticism of unrestricted international borders.
individuals can simultaneously strengthen their national cultures and enjoy the cultural products of other national cultures. But the left-liberal objects, if secession does not restrict access to other cultural products or limit their impact on a national culture it is not clear whether secession makes any difference, at all, to the strength of a culture.

e. Secession fails to strengthen a national culture.

The fifth left-liberal objection is that secession as a strategy to strengthen Tamil culture is ultimately futile. The left-liberal objects it is not clear that Tamil national culture will be any stronger in a separate Tamil state than it can potentially be in a liberal multi-national Sri Lanka where Tamils enjoy basic liberties. The left-liberal argues that given the cost of secession - in terms of institutional reconstruction, the flow of citizens, and the uncertainty about exactly how these two new states will perform economically - it is uncertain if Tamil national culture will be strengthened at all in a new Tamil state.

Moreover, if Tamil national culture cannot be strengthened in a united Sri Lanka, where Tamils enjoy federal autonomy and bilingual rights, it is hard to conceive how a separate state would make much difference. Even in the case where a national culture may be under threat of extinction (and this is clearly not the case for Tamil culture in Sri Lanka), it seems unlikely that separation will strengthen a national culture.

In most cases, the national cultures of minorities are vulnerable because they lack a robust economic basis. Secession will diminish any economic obligation a central state may have to ensure that a national minority who are also citizens of the state enjoy economic equality. Ultimately, the left-liberal objects, whether a national minority wishes to avoid the risk of cultural extinction or simply wishes to strengthen itself culturally, it is not clear that secession is preferable to a multinational state where a national culture enjoys federal autonomy and bilingual rights. In Sri Lanka, it is not clear whether Tamil national culture will be any stronger in a separate state than it will be in a united one. Given the uncertainty of the consequences of even a benign secession, left-liberals argue a united Sri Lanka, where Tamils enjoy federal autonomy and individual rights, and are treated as equals, is preferable to one that becomes two separate states.

But Tamil liberals argue it is unlikely they will be treated as equals even in a federal Sri Lanka. They invoke the left-liberal claim made to convince the Sinhala liberal
that the Sri Lankan state has demonstrated prejudice towards the Tamil people. They argue that given the fact of this prejudice federalism is an unstable arrangement. All of the left-liberal arguments that were used to convince the Sinhala liberal about the political moral desirability of federalism over a unitary state, the Tamil liberal now invokes to convince the left-liberal about the moral desirability of secession over federalism. This leads to the final left-liberal objection.

*f. Secession will lead to an illiberal state.*

What distinguishes the Tamil liberal from the Tamil nationalist is his support for the liberal freedoms. The Tamil liberal may believe there are reasonable differences, empirically, over whether a separate Tamil state will deny the basic liberties of its citizens. However, as a liberal who believes in the priority of the basic liberties, he would not want to take the chance that it may. The Tamil liberal balks at the prospect of a state where the basic liberties are systematically denied and violated. He prefers a united Sri Lanka where Tamils may enjoy federal autonomy, bilingual rights and greater basic freedoms, to a separate state where Tamils are compelled to trade in their basic freedoms for a more robust national culture.

Recall that the complex liberal justification for secession as a means of strengthening a national culture was based on the dual provisions that any new state must uphold basic liberties and the rights of minorities and must fulfill its international obligations. The left-liberal argues that given the violent history of Tamil separatism in Sri Lanka and the systematic brutality of its main political proponents - the Tamil Tigers - it is unlikely that any Tamil state will uphold basic liberties and rights of minorities. The Tigers have murdered all rival Tamil political leaders - from the leader of left wing Tamil guerrilla organizations to leaders of moderate Tamil parliamentary parties. They have executed Tamil intellectuals and dissidents for challenging their political authority and they have suppressed all internal dissent within their organization. Apart from suppressing the rights of other Tamils, the Tigers have systematically violated the rights of regional minorities living in predominantly Tamil areas. They expelled more than one-hundred thousand Muslims from the Northeast and have carried out large-scale massacres of Muslim and Sinhala civilians. The Tigers have failed to uphold the basic
liberties and recognize the rights of other minorities. The left liberal thus argues that secession will lead to an illiberal Tamil state dominated by the Tigers.

The Tamil liberal, while agreeing with the characterization of the Tiger armed struggle as illiberal, resists the conclusion that this will inevitably lead to an illiberal state. He argues many illiberal armed struggles resulted in democratic regimes that respected basic freedoms. The African National Congress in South Africa, the Palestinian Liberation Organization in Palestine, the Frente Sandinista para la Revolucion Nicaraguan in Nicaragua, are some examples. Clearly all of these organizations respected internal dissent more, carried out fewer killings, and were far more broad based in their approach to political struggle when compared with the Tigers. Nevertheless, it is hard to characterize their struggles as always respecting individuals’ basic liberties. They did engage in indiscriminate violence, suppress dissent and assassinate enemies. Thus, for the Tamil liberal, the nature of the armed struggle engaged in by the Tigers while indicative of future Tiger behavior does not predetermine it. While he concedes that a separate Tamil state may be illiberal, he refuses to conclude that it will.

To dissuade the Tamil liberal from secession, the left liberal need not convince him that a separate Tamil state will be illiberal. The left liberal only needs to convince him that it may be. The Tamil liberal, unlike the Tamil nationalist, will not gamble away his basic liberties by opting for a Tamil state that maybe illiberal. Faced with the prospect of a Tamil state where Tamils may only be Tamils but not free and equal citizens, the Tamil liberal will desist from supporting secession. The Tamil liberal defends his national culture as having social, not moral content. He does not see “Tamilness” as an end in, itself. As a liberal he refuses to trade the basic liberties for any other good, whether economic, social or cultural. This refusal stems from a recognition of the incommensurability of comprehensive moral doctrines and the violence that is done to individuals in a state that fails to recognize this. The Tamil liberal recognizes that Tamils have enjoyed basic liberties within a Sri Lankan state to a greater extent than

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213 For a factually precise description of human rights violations in Sri Lanka that document and describe the violations of the Tamil Tigers, amongst others, see the series of Human Rights Reports published by the University Teachers for Human Rights, Jaffna, particularly The Broken Palmvrah, 1988 and The Death of a Heroine. Also see T. S. Subramaniam, “Chronicle of Murders,” Fontline, Aug 14-27, 1999.

214 I am grateful to Neelan Tiruchelvam for helping me strengthen my argument by pointing out this Tamil liberal objection to the claim that a separate Tamil state would be illiberal.
they have done within a Tiger controlled pseudo state. Tamils have continued to vote freely and elect representatives who raise their concerns in parliament and they have continued to express their views critical of the government as well as the war in a relatively free press.215

The Tamil nationalist, however, is willing to entertain the possibility of endorsing a separate Tamil state that does not respect the basic liberties. While he considers the loss of basic liberties or parts there of, a loss, he is willing to trade them in for the good of a stronger national culture. The Tamil nationalist seeks to find the appropriate balance between the good of a national culture, other socio-economic interests, and the basic liberties. But the Tamil liberal denies there is such a balance. The Tamil liberal gives priority to the basic liberties and is unwilling to trade them for any other good. He wants to avoid putting himself in the situation of gambling or negotiating, say, less freedom of expression for more cultural or, for that matter, economic goods.216 Faced with the prospect of an illiberal Tamil state, the Tamil liberal opts for federalism.

VI. Conclusion

Concluding, I respond to two political objections to federalism. First, whatever its moral desirability, federalism will not end the war. And political support for federalism, as opposed to moral support, ultimately depends on its ability to do so. Second, federalism is either unnecessary or futile.217 It is unnecessary if the Sinhala people and Sri Lankan state are willing to treat all fellow Tamil citizens as equals. And it is futile if the Sinhala people continue to evince group prejudice towards the Tamil people and the state continues to act on it.

VI. a. From War to Peace?

215 In fact most Tamils are fearful of expressing criticism of the Tamil Tigers not of the Sri Lankan government.

216 "The priority of liberty implies in practice that a basic liberty can be limited or denied solely for the sake of one or more other basic liberties, and never, as I have said, for reasons of public good or of perfectionist values. This restriction holds even when those who benefit from the greater efficiency, or together share the greater sum of advantages, are the same persons whose liberties may be limited or denied." Rawls, 1993, p. 295. For a more general discussion of the priority of the basic liberties see Lecture VIII.

Federalism is irrelevant because resolving the ethnic conflict, politically, will not end the war, militarily. Whatever the origins of the war in rival ethnic claims, today’s violence has gone beyond them. The armed forces of the Sri Lankan state, the Tamil Tigers and the numerous paramilitary groupings have converged on a violent conflict that has little to do with competing claims of justice and equality. Realizing political equality through federalism will have no impact on the war. And it is the pain and suffering of the war not ethnic prejudice that is the primary political problem faced by ordinary Sri Lankans. The fact that federalism is morally more desirable than either a unitary state or a separate one may move philosophers and saints, but it is unlikely to convince politicians and citizens. Even those who share the political moral values that justify federalism will not be mobilized by moral arguments, alone, leave aside those who do not. If federalism will not end the war why support it?

To persuade the Sinhala liberal to go beyond a federal state and to dissuade the Tamil liberal from supporting a separate state, I assumed federalism will not end the war in Sri Lanka. Avoiding the exaggerated claim that federalism will lead to peace in Sri Lanka must not be confused with denying the more modest claim that federalism will contribute to it. Federalism is the only political arrangement in Sri Lanka that can obtain support from an overlapping consensus, not only of diverse reasonable political moralities, but also of some unreasonable ones. This makes federalism more stable, politically, than either of its alternatives, a unitary state or a separate one.

Let us contrast the choice of political arrangements that have emerged from our discussion with those that preceded it. Initially, Sinhala liberals and Sinhala nationalists supported a unitary state while Tamil liberals and Tamil nationalists supported a separate one. Federalism was the least viable option obtaining support only from the left-liberal. But this has changed. Federalism now has the support not only of the left-liberal, but also of both the Sinhala and Tamil liberals. In contrast, the unitary state is supported by only the Sinhala nationalist and the separate one by only the Tamil nationalist. But support for federalism does not stop here. It is possible under appropriate circumstances to also

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218 For a description of the Sri Lankan conflict emphasizing it as a “dirty war” rather than an “ethnic war,” see Dharini Rajasingham-Senanayake (1998).
convince the Tamil nationalist and Sinhala nationalist to support federalism. To do this we need to make one more distinction - between the nationalist and the ultranationalist.

Consider the distinction between the Tamil nationalist and the Tamil ultranationalist. Like the Tamil ultranationalist, the Tamil nationalist is moved by partiality towards his co-nationals and concern for his culture as an impersonal good.\(^{219}\) He favors fellow Tamils over members of other ethnic groups in the distribution of public goods and he views his national culture, not only as a good that provides benefits to individuals, but as a good in, itself. Unlike the Tamil ultranationalist, the Tamil nationalist neither disregards the interests of those who are not his co-nationals, nor rejects the role of culture as a personal good. This can make him amenable to a federal solution within a united Sri Lanka not simply as a compromise of his Tamil nationalist principles but even as an instantiation of them. The Tamil ultranationalist considers culture primarily as an impersonal good and disregards the interest of those who are not his co-nationals. Thus, any political arrangement short of secession is a compromise of his principles. The distinction between the Tamil nationalist and the Tamil ultranationalist here is an important one. It suggests that even if a Tamil nationalist believes a separate state will increase the good of a national culture, he may still be willing to support a federal solution within a united Sri Lanka if it leads to an increase in his basic liberties and material interests.

There are four ways in which a federal state can appeal to a Tamil nationalist over a separate one. First many Tamils, even those living in the Northeast, have important economic links to the predominantly Sinhala South. These include agriculture, commerce, and employment in the public sector. There is also considerable migration as Tamils come South either to flee the war or to seek work. Second, a united Sri Lanka with federal autonomy is more likely to provide a framework for Tamils to enjoy individual freedoms than a separate Tamil state. Third Tamils living in predominantly Sinhala areas will have greater access to their national culture. Fourth Sinhalese living in pre-dominantly Tamil areas will also have greater access to their national culture.

The distinction between the Sinhala nationalist and Sinhala ultranationalist is similar to that between the Tamil nationalist and Tamil ultranationalist. The Sinhala

\(^{219}\) See Thomas Hurka (1997) for an insightful discussion of national partiality.
nationalist prefers peace and stability in a federal state over war in a unitary state. In this he differs from the Sinhala ultranationalist who single-mindedly rejects federalism. Clearly, there is no political argument that can decisively convince the Sinhala nationalist of the political desirability of a federal Sri Lanka over a unitary one. Similarly, there is no political argument that can decisively convince the Tamil nationalist of the political desirability of a federal Sri Lanka over a separate Tamil state. There are only a series of political considerations, some more or less convincing than others.

VI.b. The Futility of Federalism?
The second objection is that federalism is either unnecessary or futile. It is unnecessary if the Sinhala people and Sri Lankan state are willing to treat all fellow Tamil citizens as equals. It is unnecessary because in such a state they will enjoy equal rights and be able to pursue their economic and cultural interests without the hindrance and, indeed, with the help of their fellow citizens. In the absence of group prejudice, all Tamils will have to do is communicate their reasonable interests to their fellow Sinhala citizens. Their fellow citizens will take these interests into consideration when they vote on particular policy issues. Thus federalism is unnecessary.

Federalism is futile if the Sinhala people continue to evince group prejudice towards the Tamil people and the state continues to act on it. While federalism may provide a temporary block to Sinhala prejudice, it will fail to prevent consistent Sinhala effort to undermine any regional autonomy Tamils may enjoy. The bureaucracy will undermine federalism by refusing to decentralize administrative power. Politicians will undermine federalism by passing laws that weaken constitutionally granted powers or by invoking emergency measures. Ultimately, the federal autonomy of a Tamil province in a united Sri Lanka will be stymied by the combined efforts of prejudiced Sinhala bureaucrats and politicians. Since federalism is unstable, secession becomes the only stable option, politically, in the presence of Sinhala prejudice.

But this criticism of federalism applies to a modus vivendi defense of it, not a political liberal one. The political liberal stability of federalism is not based simply on its garnering the support of the most number of persons in Sri Lanka. Neither is federalism just a political and institutional mechanism that helps realize the aspirations of all...
persons, equally, whatever those aspirations are. Rather than simply aggregating the pre-existing (prejudicial) preferences of citizens, federalism helps shape them. A political liberal defense of federalism seeks to constitute a political community where all citizens are treated as equals from one where all were not. Even as federalism is constituted by the recognition of group prejudice, the political deliberation involved in justifying and institutionalizing federalism helps diminish the very prejudice that it is instituted to protect citizens from.\textsuperscript{220} It is this that provides federalism with political moral stability; stability that a unitary state and a separate one lack.

\textsuperscript{220} In the Sri Lankan political context such deliberations would involve forging a consensus between the two major political parties and securing majority support at a referendum.
Chapter VII
Special Representation in the United States

This chapter develops a political liberal argument for special measures to increase Black representation in the Congress of the United States. I defend these special measures as a stable political consensus between White liberals who prefer race neutral districts and Black liberals who prefer race conscious districts. Politically, this chapter is an attempt to expand support for more Black representation by distinguishing the White liberal from the White supremacist and the Black liberal from the Black separatist. The strategy of this political liberal defense of Black representation is to reinterpret a racial conflict between Blacks and Whites as a political conflict between liberals and separatists/supremacists.

It is hard to distinguish Black liberals from Black separatists, and White liberals from White supremacists in a situation of racial conflict. Individuals may share political moral values and choose different political arrangements. Similarly, individuals may differ in their political moral values but choose similar political arrangements. In the United States, White liberals view race neutral districts as a means of instituting political equality, while White supremacists view it as a means of White domination. Black liberals view race conscious districts as a means of ensuring representation for a marginalized group, while Black separatists view it as a means of promoting Black separation. The White liberal and the Black liberal need not be political opponents who support different political arrangements, but are potential political allies who share the same political principles.

I distinguish the White liberal from the White supremacist, and the Black liberal from the Black separatist, by distinguishing racist from racial polarization. Racist polarization and racial polarization are often confused.221 Racist polarization stems from White hostility and prejudice towards Blacks. Racial polarization reflects the stereotyping of Black candidates due to the difference in interests and ideology between Blacks and

221 While Justice Brennan does not confuse the two, he argues that the distinction is irrelevant for evaluating the constitutionality of sec 2 of the Voting Rights Act (Thornburgh v. Gingles). Also see Thernstrom (1987: 290 fn.36).
Whites. For the White liberal acceding to special measures to increase Black representation need not be a compromise of liberal principles with Black separatism when racial polarization can lead to a systematic disadvantage for Black candidates. Similarly for the Black liberal, acceding to measures other than race conscious districts is not a compromise of liberal principles with White power when racist polarization is not present.

This chapter is divided into V parts. Part II delineates the different political positions and their preferred electoral mechanism for redressing Black electoral inequality. Part III persuades the White liberal who endorses individual equality to support measures that go beyond compact race neutral districts. Part IV dissuades the Black liberal from endorsing race conscious districts. Part V concludes by outlining one modest reform measure to increase Black representation.

II. Electoral Arrangements and Political Positions

The electoral arrangements we have to choose from are: race neutral districts, race conscious districts and other special measures. The political positions are the White liberal, White supremacist, Black liberal, Black separatist and left liberal.

II.a Electoral Arrangements

Race Neutral Districts. Single member territorial districts are the standard electoral units for selecting representatives to the United States Congress. The country is divided into a number of electoral districts. Candidates compete with each other to represent a particular district. One representative is then chosen from each district on the basis of a plurality of votes. Candidates may run as independents or are selected by their party through a primary. The candidate who then wins is considered to represent the interests of all voters in the district. In the United States, these single member districts are redrawn after every census to have the same number of residents in each district. The candidate selection process involves a primary election for the two major political parties through which candidates are selected for each party who then contest against each other.

222 For example, Whites may vote for White candidates not because they are hostile to Blacks but because the White candidates support policies that favor person's with higher incomes or because Black candidates
The candidate who gets the highest vote is then selected. Thus single member territorial districts are based on geographical units and a first-past-the-post system.

*Race Conscious Districts.* Race conscious districts are single member districts that are drawn on a race conscious basis. They are explicitly designed to have a majority of Black voters (65%) to ensure the safe election of Black candidates to congress. The elections processes and procedures are similar to those of race neutral districts. The primary difference is that the boundaries of these districts are drawn from a race conscious perspective. While these districts have a majority of Blacks, they neither prohibit, nor prevent Whites from running or voting in them. Where such race conscious districts have been drawn, Black members have invariably been elected to Congress.

*Special Measures.* There are many measures that can address the disadvantages experienced by social groups in gaining political representation. These range from quotas and special support for candidates from marginalized groups, to proportional representation. 223 Many scholars and activists advocated these measures in the United States. 224 Some measures include quotas in constitution and law. 225 Proportional representation is a broad term that refers to electoral systems that elect representatives based on the proportion of votes they receive rather than whether they have a plurality of votes in a particular district. Proportional representation systems are of various kinds. Some systems are purely party based. Voters vote only for a political party, which decides on the priority of candidates, internally. Some electoral systems entail voting directly for individuals, while others use a combination of both party lists and individual preference votes. 226 Whatever their range, and the range is in broad, the basic distinction here is with a single member district system where the winner represents the entire district and is elected on a winner take all basis. In the conclusion, I also present a

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224 Lani Guinier (1995) is probably the most prominent of these scholars/activists.
225 The Indian Constitution includes special representation for oppressed castes and "tribal" communities. France requires that 50% of candidates for office from each party be women. Other measures can include special financial support for disadvantaged groups in running for office.

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modest reformist variation of the current system of race conscious districts in the United States.

II.b. The Political Positions

The White Positions. The two White positions are the White liberal and the White supremacist. They both support race neutral single member districts. Nevertheless their rationales for doing so are different. The White liberal argues that all citizens should be treated as equals in a political community. This equality includes political rights, such as the right to vote and to run for office. She believes that compact single member districts provide a race neutral and effective means of selecting representatives for congress. She grants that there are many different electoral systems and that some may be preferable to others for different reasons. However, she does not believe that racial or ethnic diversity on its own mandates abandoning race neutral single member districts.

She rejects the notion that the right of political representation is a group right, i.e. that groups simply by being different due to class, religion, ethnicity or race are entitled to political representation. Clearly, she believes that members of groups may have common interests, but for her the fact of this commonality, alone, does not entitle them to any right of political representation. She grants that Blacks and Whites may under certain circumstances have different interests, but she does not believe that the interests of Whites or Blacks should take precedence over the other. But just as the White liberal rejects group representation on the basis of common social or ideological characteristics, she also rejects discriminating against or disadvantaging individuals in the electoral process on the basis of these group characteristics. She supports equal electoral opportunities for all citizens, irrespective of race, to vote and be elected to office.

For the White supremacist, however, race neutral single member districts are a means of ensuring White domination of American politics. The White supremacist believes that the interests of Whites should take precedence over those of Blacks. He believes that Whites are inherently superior to Blacks and it is this superiority that leads to a greater number of White candidates winning office than Black ones. He believes that
the only way Blacks win is when they are given preferences or the electoral system is structured through race conscious districts to ensure their victory. He opposes this because he believes that such a process of race conscious districting will lead to the election of inferior representatives.\textsuperscript{228}

\textit{The Black Positions.} The two Black positions are the Black liberal and the Black separatist. They both support race conscious districts, but their rationale for doing so is different. The Black liberal supports race conscious districts because she believes that Blacks face a systematic disadvantage in running for office and having their interests addressed in a political system dominated by Whites.\textsuperscript{229} She believes that this dominance is not simply based on the different interests that Blacks and Whites may have as social groups, but on the basis of White hostility and prejudice towards Blacks. This hostility not only leads White voters to oppose Black candidates, it also leads White representatives to disregard Black interests in the legislature. She argues that since political representation is ultimately group-based - whether racial, territorial, or political - the only way to ensure Black political equality, is to structure the electoral system in a way that increases the possibility for the election of Black candidates. Race conscious districts are one such means for doing so.

The Black separatist views Blacks and Whites as having different interests not simply because of their different social situations but because of their different racial identities. He believes that Whites not only have different interests from Blacks, they are also incapable of representing Black interests. For the Black separatist representation is not simply about the representation of competing groups, but about the representation of competing racial groups. Thus it is only Black representatives who can represent Black

\textsuperscript{227} The White liberal position here is broadly, though not exclusively, based on that of Abigail Thernstrom (1987). While there are differences in the political arrangements explicitly endorsed by Thernstrom and the White liberal, the ideological approach is similar.

\textsuperscript{228} It is hard to find serious scholars who advocate this position in voting rights debates. The closest analogue to this argument in social policy is the \textit{Bell Curve} by Richard Herrnstein and Charles Murray (I do not mean to imply by this that the book is a serious piece of scholarship). For a critique of the \textit{Bell Curve} see the collection of essays edited by Russell Jacoby and Naomi Glauberman (1995).

\textsuperscript{229} The Black liberal position is derived from “Keeping the Faith: Black Voters in the Post-Reagan Era”, Chapter 2, Lani Guinier (1995), Jane Mansbridge (1996), James Blacksher (1998). Lani Guinier’ s current position has shifted towards one that is more accurately described as a left-liberal one. This shift is discernible in her later essays also published in \textit{Tyranny}.
voters, because only Blacks know what Black interests are. The Black separatist then supports any mechanism of selecting representatives that enhances the possibility that only Blacks can be elected to represent Blacks.\textsuperscript{230}

\textit{The left liberal position} The left-liberal political position cuts across racial lines. Left-liberal support for special measures that increase Black representation stems from a political commitment to social diversity, basic individual freedoms and/or economic equality. The individuals within this broad position do not, themselves, agree on the relative importance of these three considerations. Some may emphasize socio-economic equality, others may emphasize individual freedoms and still others, may simply emphasize social diversity. Whatever their differences, they all view race neutral districts as limiting Black representation and race conscious districts as precluding cross racial coalitions and limiting Black interests. They support a range of special measures as a means of simultaneously addressing Black political grievances, strengthening democracy and resolving racial conflict.

The moral argument for increasing Black representation in Congress then proceeds from two directions. First I show how addressing Black concerns about equal political representation leads to alternatives to race neutral districts. This distinguishes the White liberal from the White supremacist. Second I show that Black concerns about electoral inequality need not lead to race conscious districts. This distinguishes the Black liberal from the Black separatist. Concluding I outline an alternative.

\textbf{III. From Race Neutral Districts to Special Measures}

This section persuades the White liberal that support for political equality in the United States should lead to support for special measures that ensure Black voters and Black candidates do not face disadvantages due to race in choosing representatives and running for office. This argument proceeds in three steps. First I show how White liberal support for one person-one vote leads to endorsement of anti-discrimination measures

\textsuperscript{230} I do not mean to infer that the Black seperatist position and the White supremacist one are morally equivalent. On the contrary I think that in practical political terms the Black separatist position is not incompatible with providing support for racial justice in the US, given the historically disadvantaged
that ensure Blacks can register to vote, have their votes counted and run for office. Then I show how White liberal opposition to racist White politicians, hindering Black voters from electing representatives of their choice and Black candidates from running for office, leads them to advocate race neutral districts that are geographically compact. Finally I show how White liberal opposition to the disadvantages Black voters and candidates face due to the group bias of White voters leads them to accept special measures that increase Black representation.

III. a. One person-one vote. Liberals endorse the individual right to vote because it is a fundamental political right that ensures every citizen in a political community is treated as a political equal. The right to vote is considered vital for securing important instrumental, deliberative, expressive and recognition interests of a citizen. In a representative democracy, where all citizens cannot directly participate in the business of rule, the right to vote also provides a means by which citizens can select among different rulers.231

First, the right to vote has an instrumental role when it enables citizens to associate together to elect representatives who can further their material interests.232 These interests can range from ensuring the public provision of basic goods and services to furthering their particular sectional interests in the legislature. Tobacco farmers will vote for candidates who support state subsidies for farming tobacco. Small businessmen will vote for politicians who promise tax breaks for small businesses. Similarly voters in a particular region may prefer politicians who secure federal government funding and attract private investments.233

Second, the right to vote helps secure deliberative interests by enabling citizens to signal to the polity, in general, and the legislature, in particular, their views on the position of Blacks. The White supremacist position, however, is not. Still I use these two positions because they represent familiar and representative views about racial politics in the United States.

232 Downs (1957).
233 There is an important debate about whether voting is rational from a purely self-interested perspective, i.e., if voters only pursue individually based self-interest they would not participate in elections because the individual cost for each voter of casting one vote is higher than the benefits that would accrue to her from doing so. But instrumental interests need not be simply egoist. They can also be derived from group solidarity and pressure, where such solidarity leads members of a group to vote in order to secure benefits for the group. (Mechl).
common good. For example, should the country go to war or not? Should taxes be raised to pay for social welfare? Are programs that favor women and minorities over equally qualified White men just? These are questions where citizens seek to promote their particular conception of political justice. Answers to these questions reflect, not simply citizens’ particular interests (e.g. tax breaks for farmers), but their views about what treating citizens as equals requires. Citizens vote to elect representatives who share their view about the common good and express it during deliberations in the legislature. The right to vote thus promotes the deliberative interests of all citizens even in the absence of the direct input of voters into the public debate when laws are made.

Third, the right to vote also helps secure an expressive interest that is distinct from the deliberative one. While the deliberative interest is about expression that secures the common good or helps frame a solution to a common challenge faced by the polity, all expressive interests in voting need not be. Voting can also be about simply expressing a particular conception of the good, contempt for the current institutional arrangements including the vote, dissatisfaction with all political alternatives, rejection of representative democracy or hostility to a particular group based on a comprehensive doctrine. Voters express these views by defacing the ballot, writing in cartoon characters as candidates, voting for racists, sexists or homophobes, or simply not voting at all. While these forms of expression need not always be political, their availability to citizens depends on the right to vote.

Finally, the right to vote secures an important recognition interest of citizens. By granting every citizen one vote the political system recognizes all citizens as political equals irrespective of their social status. This recognition of equality through the right to vote and hold office has played a critical role in the struggles of workers, Blacks and women in the United States for equal citizenship. The interest of recognition, inherent in the right to vote, can be appreciated by the discomfiture even committed liberal egalitarians express to schemes that seek to achieve substantive equality by giving

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234 Rousseau (Social Contract), Petit and Brennan; Meehl; Joshua Cohen (1983).
235 The Supreme Court of Sri Lanka in a decision endorsed freedom of expression as an important interest in the right to vote (Karunatilleke and Deshapriya v. Dissanayake, 1999, 1Sri Lanka Law Reports 157). This contrasts with the US Supreme Court decision in Timmons v. Twin Cities Area New Party rejected the presence of important expressive interests in the right to vote.
members of disadvantaged groups more votes than members of others.\footnote{236}{See Van Parijs (1998) for an argument to limit the right to vote of the elderly in advanced industrial democracies because their disproportionate population leads to a skewing of public resources in their favor to the detriment of future generations. Van Parijs's simultaneous invocation of Machiavelli and Rawls is an (ironic) acknowledgment and criticism of liberal discomfiture that limiting the franchise violates political equality. For an expression of liberal discomfiture over such schemes because they ignore recognition interests see Beitz, pp. 157-8.} In most liberal communities citizens view the ideal of one person-one vote as an expression of a polity's commitment to political equality. Thus the right to vote along with the ideal of one person-one vote secures the interests citizens have in being recognized as equals in a political community.

While liberals – White, Black and Left - may differ in their relative commitment to instrumental, deliberative, expressive and recognition interests, they agree that the right to vote can help secure these interests and that it is important to do so in a political community. As equal citizens in the political community of the United States, Blacks ought to enjoy the same right to vote as Whites. By ensuring their right to vote is protected, Black citizens can participate in the political process and vote for representatives of their choice. Liberals support political measures, such as the Voting Rights Act of 1965, to ensure that Blacks' right to vote is realized in practice by seeking to end discrimination.\footnote{237}{Section 5 of the VRA - the "pre-clearance" provision in particular grants extra-ordinary powers to the federal government. This provision requires that any changes made to the electoral process by jurisdictions covered by the VRA, either be pre-cleared by the Justice Department or permitted by the US District Court of the District of Columbia. Section 5 places the burden of proof on covered jurisdictions that seek to make changes to electoral procedures to demonstrate that these changes will not adversely affect Blacks. Despite concerns on the part of the US Congress and the US Supreme Court about the radical intervention in states' powers that would result from Section 5, there was widespread acceptance that only such measures prevent states where racist Whites are in power from denying Blacks the franchise. In addition, sections 6 and 7 provided for federal registrars to register voters and section 8 provided for federal overseers to monitor elections. White liberals support these measures. The VRA was subsequently expanded to cover language minorities as well. This expanded coverage to Texas, Arizona, and Alaska.}

For White liberals the right to vote is realized when Blacks can register without unconstitutional tests, go to the polling booth, vote for candidates of their choice without hindrance, and have each of their votes counted equally.\footnote{238}{Thernstrom (1987), Justice Thomas, concurring judgment in Bush v Vera [ 116 S. Ct. 1941 (1996).] Provided there is no discrimination in every one of these measure, White liberals see no need for further steps to ensure Blacks can vote for candidates of their choice. They argue the Voting Rights Act has led to effective Black franchise. Blacks are now registered in numbers that are}
almost as high as Whites.\textsuperscript{239} Apart from the individual right to vote and the requirement of an equally weighted vote,\textsuperscript{240} White liberals argue that other measures to ensure equality in the electoral process for Blacks are concessions to group representation.\textsuperscript{241} Since the right to vote is an individual political right, they argue any further attempt at redressing electoral inequality is incompatible with liberalism.

\textit{III. b. Racism of White Politicians.} Left liberals respond that even the effective realization of one-person one-vote is not by itself sufficient to ensure political equality for Blacks. They argue that White politicians resorted to a number of electoral mechanisms to limit the opportunity of Black citizens to elect candidates of their choice and be elected to office. These measures are not directly incompatible with one-person one-vote.\textsuperscript{242} Even though Black voters can effectively exercise their franchise by voting at the polling booth and black candidates can run for office with no legal obstacles, their chances of electing candidates of their choice or being elected are circumscribed by racist White politicians. Because of their political power, racist White politicians are able to setup new electoral structures including gerrymandering, majority run-offs and at-large elections to prevent newly enfranchised Black voters from electing candidates of their choice.

White liberals accept that Blacks face additional obstacle in electing candidates of their choice even after their right to vote is realized. They concede that electoral

\textsuperscript{239} The impact of the VRA on Black enfranchisement can be illustrated by the example of Mississippi, which is the state with the highest population of Blacks of any state. Immediately following the Civil War, Blacks began to participate in politics in Mississippi in large numbers. At the end of the reconstruction in 1875 with a population that was about 54% Black, more than half the registered voters in Mississippi were Black. However, by 1896 this number was reduced to less than 5% and remained the same until 1964. Following the passage of the VRA in 1965, however, Blacks began registering to vote in large numbers once again. Within three years the percentage of Black voters climbed from 5.1% to 23.6%. (Davidson and Grofman).


\textsuperscript{241} "The fundamental principle of representative government... does not permit consideration of group rights based on race, sex, or economic status." Robinson O. Everett, Appellants Brief in Shaw v. Barr, in the US Supreme Court, 92-357, p. 27.

\textsuperscript{242} "The distinction between disfranchisement and dilution can be made as follows. Disfranchisement prohibits or discourages a group from voting - for example, through making it difficult to register, intimidating would-be voters from entering the polling booth, declaring ballots invalid for specious reasons, stuffing the ballot box, or inaccurately tallying votes. Dilution, on the other hand, can operate even when all voters have full access to the polling place and are assured that their voices will be fairly tallied." Davidson and Grofman, p. 22.
outcomes are often predictable on the basis of electoral mechanisms, given prior knowledge about racial, class and political party composition of districts. This enables politicians drawing up electoral districts to gerrymander districts, turn single member districts into "at-large" districts and use other measures that disadvantage Blacks. They argue the use of impartial criteria is the best way to avoid the substantive evils associated with racial gerrymandering that disadvantages Blacks. Impartial criteria are minimally vulnerable to manipulation by racist Whites who are seeking to exclude Blacks from electoral competition, altogether.\textsuperscript{243} While there are other means of ensuring Black voters and candidates enjoy equal electoral opportunity, impartial criteria are the only practicable means of doing so that are neither susceptible to the political power of racist Whites nor invariably lead to quotas. White liberals thus support compact race neutral districts as a means of limiting the ability of racist White politicians to minimize the election of representatives preferred by Black voters.\textsuperscript{244}

\textit{III. c. Group Bias of White Voters} Compact race neutral districts limit the power of White politicians to discriminate against Black voters and representatives. However, vote dilution depends, not only on racially motivated politicians drawing up electoral

\textsuperscript{243} "Of course there are other ways to defend impartial or neutral districting criteria than to hold that they are intrinsically fair. One might think that the use of impartial criteria, perhaps in conjunction with some non-partisan (or bipartisan) scheme for making apportionment decisions, would be the best way to avoid the substantial evils associated with gerrymandering. For example, impartial methods might be minimally vulnerable to self-serving manipulation by the party in power. As a practical matter, there is doubtless much to recommend this idea. But we must not that on this view, there is no claim that neutral criteria are intrinsically fairer than others; it simply happens that they use of politically neutral criteria helps to avoid outcomes that we have independent reasons to want to avoid." Beitz (1989), p. 149.

\textsuperscript{244} For the purpose of brevity I have left out from this section the details of the argument between the left-liberal (LL) and the White liberal (WL) for impartial criteria, summarized as follows:

- LL - Racist White politicians limit Black electoral influence through run-offs, at-large districts and gerrymanders.
- WL - Some political groups win and others lose in elections. Blacks are a political minority (left of Democratic Party) not a racial minority and lose because of their views. Their disadvantage is temporary and they can form alliances to gain power.
- LL - Blacks are a permanent racial minority facing systematic discrimination in the US with no prospect for overcoming political disadvantages, not a temporary political minority.
- WL – Intent to discriminate needs to be proved in each case where Blacks are defeated and not assumed in all where they are.
- LL – Intent to discriminate is difficult to prove, at best, and impossible, at worst. So proof of discrimination should rest on discriminatory.
- WL – Depending only on effect and not intent leads to quotas. Impartial race neutral criteria – compact territorial districts – provide the best protection from discrimination.

Also see Beitz, pp. 146-150.
mechanisms that disadvantage Blacks, but also on White voters who are biased against Blacks.\(^{245}\) Without the bias of White voters, the gerrymandering efforts of White politicians would come to no avail. It is because White voters prefer White candidates that racially motivated gerrymandering is an effective political strategy for limiting Black political participation. While compact districts may overcome the disadvantages Blacks face due to gerrymandering by White politicians, they fail to address the discrimination Blacks face at the hands of racially motivated White voters. White voters will continue to vote for White candidates in White majority districts, disregarding Black candidates. Since most districts will be majority White ones, Blacks will continue to suffer disadvantages in political participation. Left liberals argue measures that go beyond race neutral compact districts are necessary to counter this form of disadvantage.\(^{246}\) Can this form of Black electoral inequality be addressed without unfairly restricting the choice of White voters?

White liberals argue that a voter has the right to vote any way she wants. While there are several interests at stake in the right to vote - the instrumental, deliberative, expressive and recognition - she may vote on the basis of any one of these. The voter can decide which interest is most important to her in voting and how she chooses to exercise it. She may even vote on the basis of the looks, the dress, the gender or even the race of a candidate. Her preference for a member of her own racial group is one that she has every right to exercise in the polling booth. For the White liberal the political impartiality critical to the right to vote would be undermined by a system setup to favor one type candidate, whether black, conservative, tall or communist, over another. State interference with the ballot would also make citizens wary of voting their true preferences, further undermining the electoral process. For the White liberal, the preference of the worst-case voter - the racist White voter who always votes against Black candidates - is fully protected by the right to vote.

\(^{245}\) The third prong of the *Gingles* test.

\(^{246}\) This discussion follows the argument in favor of state action to counter the prejudice of White voters in Altman 1998). However, it views polarization as simultaneously less deep (not stemming from hostility) and more pervasive (stemming from stereotyping) than does Altman. Altman assumes that all bias is due to racist polarization - White hostility to Blacks - rather than as I point out racial polarization - the use of race as a proxy for a candidate's ideology and interests. The distinction between racial polarization and racist polarization suggests that remedial measures are not only morally required, but also political feasible.
Such a voter may vote against Black candidates because she views Blacks as inherently inferior and incapable of ruling, deliberating and legislating, or the White race as the “chosen” race that ought to always be in power. White voters may also vote for White candidates because they believe that racial groups ought to stick together, that Whites are getting a raw deal in society, or that politics is about the racial division of resources. Her decision to vote here is simply racist in that it will not depend on more knowledge about the particular Black candidate over the particular White one.\textsuperscript{247} White liberals defend this racist White voter's right to vote for a White candidate with or without presenting a reason for this vote that comports with the commitment a liberal society has to treating all citizens as political equals. They are concerned that any effort to structure the electoral system to favor the Black candidate would restrict White voters' (or for that matter even Black voters') choices.

Left liberals accept and even defend the right of the White racist voter to vote for whichever candidate she chooses. Failing to permit the expression of a White racist's voting preferences may lead to severe restrictions on liberty. However, failing to counter these preferences may severely undermine the life chances of Black citizens. While the White racist has a right to go into the polling booth and vote for a candidate of her choice, whatever the candidate's views or race, her racist views cannot be given weight in determining the procedures through which political decisions are made. Moreover, when these views have a substantive impact on the life chances of Black citizens - whether in housing, job opportunities, university admissions - policy makers and legislators are not only required to disregard them, but even permitted to counter them. While there may be many interests implicated in the right to vote, not simply a deliberative one, left-liberals argue that the White racist voter's recognition and expressive interests are adequately protected by any electoral system in which she has the right to vote for the candidate of her choice. She cannot, however, expect that the electoral system should grant her racist preferences equal weight as non-racist ones. There are thus no unfair restrictions on White voters' choices when the electoral system is structured to minimize or even counter group bias in voting.

\textsuperscript{247} There is a possibility that the political racist could vote for the unlikely Black candidate who believes that Whites are getting a raw deal, for whatever reason.
White liberals argue that disregarding White racist voters' preferences may not be unfair, but in the presence of a highly racially biased setting, measures to overcome the disadvantages faced by minority candidates will either lead to violations of freedom of association or be ineffectual. Consider the problem of racial bias in voting. It arises because a majority of voters - in this case Whites - vote for candidates of their race against those of the other. Because Whites are in the majority they are able to elect White representatives. Countering this form of discrimination against Black candidates entails countering the preferences of the White majority. While these majorities may be confined to particular localities or even states, they would still be majorities there. They will resist these changes and challenge them politically. Where there is racial polarization, the election of Black candidates will only be possible if freedom of association is severely restricted. Whatever the unfairness of the preferences of White racist voters, restructuring the electoral system requires external (whether courts, federal agencies or congress) interference with their choice of candidates and political activities. This interference can lead to repression as the state is compelled to limit freedoms in order to enforce a fair election that is not tainted by racism.

This interference also undermines what White liberals view as one of the most important political benefits of an election - it is a procedure for settling the question of who gets to rule in a determinate manner. The point is not that the majority always makes the right decision or picks the best-qualified ruler. But that when there are differences, as there always will be, about who the best ruler is, some clear and unambiguous procedure that can pick one is necessary. There are of course many procedures that can be considered clear and unambiguous. For example, the lot allows for picking candidates in an impartial manner that treats all persons as equals. Election by the majority, however, provides such a procedure that is not only clear and

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249 The history of ensuring political equality for Blacks in the United States illustrates this point well. The greatest success in electing Black officials in the South was immediately after the civil war during the reconstruction. But this period also saw the greatest limitations on Whites' freedom of association and political organization. (Chapter 8, Foner, 1988).
250 "The most important point about a system of election for representatives is that it provides an intelligible and determinate answer to the question why these particular people, rather than others perhaps equally well or better qualified, should run the country." Barry (1979).
251 Manin (1997).
unambiguous, but also helps protect freedom of association in a way that other procedures do not.\textsuperscript{252}

Furthermore, White liberals argue the election of Black candidates in the face of White racist resistance will have little effect on policies and laws. Black representatives will now have to overcome White resistance in the legislature that they circumvented in the elections through a special electoral procedure. If racial bias is widespread as left-liberals claims it is in the United States, the efforts of newly elected Black representatives are bound to fail without the support of White representatives. They will be unable to make policy changes or take legislative initiatives that favor Blacks when faced with majority White resistance.\textsuperscript{253}

Left liberals respond that group bias does not stem simply from racism. When White voters vote against Black candidates, because they are Black, they do so for two reasons – the first is racism and the second is the use of race as a proxy for socio-economic interests, political ideology and political access. The former – racist polarization – is incompatible with Whites voting for Blacks. But the latter – racial polarization – can be compatible with Whites voting for Blacks.\textsuperscript{254} Some voters also use race as a proxy for other factors – interests, ideology and access - when they vote against a Black candidate. A common feature of most elections in the United States is the paucity of detailed political information that voters have in deciding whom to vote for. This paucity of information does not simply reflect a lack of civic mindedness, education

\textsuperscript{252} This is not to deny that there may be other reasons for picking majority rule over the lot to select representatives other than ensuring freedom of association.

\textsuperscript{253} "Black activists have long recognized that blacks cannot become an effective political majority without legislative allies. Yet, electing Black officials may simply relocate to the legislature polarizing experienced at the polls. Indeed, some political scientists studying "the new black politics" in Cleveland, Chicago and Atlanta have challenged the working assumption that black electoral success will ultimately reduce polarization. Based on empirical studies of local black officials and city council members, these scholars argue that black representatives often become an ineffective, "seen but not heard" minority in the legislature. Because the individual black elected officials may not be able to overcome polarization to "infiltrate the decision making process" at the legislative level, the election of black representatives does not, by itself, translate into intergroup cooperation." (emphases in original) Guinier (1995), p. 61.

\textsuperscript{254} While the polarization between Black and White voters is a common theme of all studies of voting rights, only one study discusses the disadvantages Black candidates face due to White voters directly, and even this study fails to make the distinction between racial and racist polarization. It assumes, however, that all polarization is racist:

"It is my contention....that the paucity of black officeholders from non-majority-black areas is due in significant part to the continued racial animus underlying whites' political thinking and voting behavior." Reeves (1997), p.9.
or campaign efficacy.\textsuperscript{255} It often reflects the practical reasoning of individual voters who do not believe that the effort expended in obtaining new information about candidates is always worth its value.\textsuperscript{256} Voters would rather rely on informational shortcuts to decide whom to vote for. These informational shortcuts can range from those that are directly political, such as party membership, to those that are more personal, such as marital status, demographic traits or even a candidate’s smile.

Consider the case of a voter who goes to the polling booth and has to choose between two candidates. If all he knows about them is their party membership, he will use this as a cue to make his choice. A conservative voter committed to a United States that is "morally upright," militarily isolationist, wary of recognizing differences in sexual orientation, opposed to abortion and more sympathetic to public support for religious expression will vote for the Republican candidate. This is not surprising. Many of these values are generally associated with candidates who come from the Republican Party. Her use of party membership as a cue need not involve a belief that all Republicans share these positions or that all Democrats do not.\textsuperscript{257} In the absence of more detailed political and personal information about the candidates, it indicates a rough and ready evaluation, about which candidate is most likely to support the positions of the voter. Even where a voter may have limited or contradictory information about a candidate, party membership suggests how a candidate may view himself and what political pressures he may be susceptible to once he is in office. The use of this cue becomes not only important, even vital to help a voter select a representative in an election.\textsuperscript{258}

Similarly, voters use characteristics such as a person’s ethnicity when deciding to vote for a candidate. Demographic characteristics are some of the most important cues that voters use in an election.

Demographic facts provide a low-information shortcut to estimating a candidate’s policy preferences (though not to evaluating past public performance). Characteristics such as candidate’s race, ethnicity, religion, gender and local ties are important cues because

\textsuperscript{255} Popkin (1991).
\textsuperscript{256} “I propose to view the voter as an investor and vote as a reasoned instrument in collective goods, made with costly and imperfect information about under conditions of uncertainty. This analogy is appropriate because the voter expends time and effort in the expectation of some later return, a return that will depend in large part on what others do.” Popkin (1991), p. 10.
\textsuperscript{257} And all Republicans do not, and some Democrats do.
\textsuperscript{258} Popkin (1991), pp. 50-60.
the voter observes the relationship between these traits and real-life behavior as part of his daily experience. Where these characteristics are closely aligned with the interests of the voter, they provide a basis for reasonable, accessible and economical estimates of candidate behavior. It has often been noted that the use of demographic cues in voting probably plays a more important role in American campaigns than it does in those of more homogeneous countries.\textsuperscript{259}

In the United States race is one of the most salient of demographic characteristics. It often encompasses many others, ranging from neighborhood to socio-economic status. Because of the encompassing character of race in the United States, it is also an important cue to political ideology and socio-economic interests.

Consider an election where the only information a voter has about a candidate is her race. This voter would then have to use race to decide how he is to vote in the election. Now if race were simply a random characteristic with no predictive value politically, such as hair color, this would not be a particularly useful piece of information for electoral purposes. And it would not be rational to rely on race as a cue to help select a candidate. But given the close association between Blacks as a social group and liberal democrats as a political group, this piece of information turns out to be very relevant to a voter. A White voter who is not racist could vote against a Black candidate in an election in the absence of any other relevant information, from the use of race as a proxy for a candidate's political ideology, socio-economic interests and political access. This use of race as a proxy by the White voter is not incompatible with his desire to treat all Blacks as political equals.

Being a member of the social group - Black Americans - is often a good proxy for being the member of a political group - liberal democrats.\textsuperscript{260} Blacks as a social group tend to support equality of opportunity and redistribution in terms of racial politics and democratic welfare statism in terms of economic and social policy.\textsuperscript{261} These are positions generally associated with the left of the Democratic Party. Unlike, many other social groups in the United States, even groups that have common ethnic characteristics, Blacks

\textsuperscript{259} Popkin (1991), pp. 63-64.
\textsuperscript{260} I use the term "liberal democrat" in the sense in which it is popularly used in the United States.
tend to be both a social group and a political group. For example, 90% of Black voters choose the Democratic Party and 60-70% identify with the left of the Democratic Party.\textsuperscript{262} Being Black is probably the single demographic characteristic that is most predictive of a voter's political behavior in the US. In many ways it is even more narrowly predictive of person's political behavior than is party identity. The racial identity of a candidate is a cue that can be useful for voters who look for informational shortcuts in deciding whom to vote for. Black representatives tend to share the same ideological positions as Black voters. This is captured by different measures of their voting records. Black representatives tend to get the highest scores in ratings by the Leadership Conference on Civil Rights and by the AFL-CIO Committee on Political Education.\textsuperscript{263} The higher the score in these ratings, the closer the association with the left of the Democratic party.

There are two reasons why Black representatives may share the positions of Black voters. The first is that Black candidates are a subset of Black voters and are thus likely to share the same position as Blacks generally. The second is that Black representatives tend to be elected by Black voters and are thus likely to represent their positions. Clearly, not all Black congressmen support positions associated with Blacks as a social group, i.e., equality of opportunity and redistribution in terms of racial politics and democratic welfare statism in terms of economic and social policy. Additionally, many White Congressman support positions associated with Blacks as a social group.\textsuperscript{264} Some Black congressmen have been elected on the ticket of the Republican Party and oppose redistribution in terms of racial politics and democratic welfare statism.\textsuperscript{265} Nevertheless, the association of Black candidates with the position favored by both Black voters and Black representatives is rational for a voter who has no other information about candidates. As a Center-right Democrat or Center/Right Republican, he could rationally use race as a proxy for a candidate who advocates a political ideology he disagrees with.

\textsuperscript{263} Swain (1995), p. 57; Cameron \textit{et al}.
\textsuperscript{264} And these White Congressmen may or may not be elected by Black voters.
\textsuperscript{265} For example, Representative J. C. Watts in the current Congress has a political ideology that differs from that which is associated with the Congressional Black Caucus dominated by Democrats.
His vote for a White candidate over a Black one, in the absence of any other information need not be racist.\textsuperscript{266}

A White voter may also oppose a Black candidate because he believes they may not share a common bundle of socio-economic interests. The social and economic interests here are not ideological as much as they are material. For example, most Blacks in the United States are socio-economically worse off than Whites. Moreover in the North, Blacks tend to live in cities and have interests associated with the provision of better city services. In the South, Black populations vary, but are more likely to be rural, rather than urban in character. These interests are not directly racial, i.e., they are not about policy that is usually associated with the politics of race in the United States, such as anti-discrimination policy or affirmative action. Whites who share the same positions in terms of racial politics with Blacks may differ from Black voters in social and economic interests. For example, White voters may support equality of opportunity and even redistribution in racial politics but oppose democratic welfare statism in terms of social and economic policy.\textsuperscript{267} These differences can lead to Black support for welfare policies that target the poor and White support for tax breaks that favor the middle class. Not all Blacks are associated with the poor and favor democratic welfare state polices, just as not all Whites are associated with the middle class and oppose such policies.\textsuperscript{268}

But the support for democratic welfare statist policies by most Black congressional members and the continuing support these congressmen receive from Black voters, reinforce the association of Black candidates with a particular bundle of socio-economic interests. In the absence of other information, except the race of a candidate, a White voter may then use race as a proxy for a bundle of interests that he shares with a White candidate.

\textsuperscript{266} This begs the question of why the candidate's race, rather than any other characteristic, is known to voters. There are two potential explanations for this. The first is that the United States is an intensely racially conscious society where race is the one characteristic of a person everyone is invariably aware of. Most people look for, refer to and know about an individual's race because it is an encompassing feature of American society. The second is that people are immediately aware of a person's race because it is based on clearly visible physical characteristics, unlike say religion. And that while there may be many other characteristics, like religion, that may be equally important in predicting a candidates policies, voters can only vote on the basis of the characteristic they are aware of - race.

\textsuperscript{267} Plotke (1995), p. 222, Box 6. These are commonly categorized as voters who are economically conservative but socially progressive.
Next, a White voter may use race as a proxy for the political access of a candidate. Blacks as a social group tend to be socio-economically disadvantaged. This disadvantage can lead to the perception that Black candidates have less education, fewer political contacts and therefore less influence than White candidates. Political access affects a candidate's ability to influence other influential actors - administrators, politicians and businessmen - to obtain services and benefits to a candidate's constituency.\textsuperscript{269} Even where a voter may not fully share a candidate's positions on issues, they may support candidates who they perceive to have more access. The basis for evaluating political access can vary from examining education and wealth, to personal skills and contacts. A person with education and wealth can utilize these resources to get the political contacts necessary to "do the job." Similarly, a person without wealth and education, but with the requisite political contacts may also serve his constituents. The White voter's perception that a White candidate is likely to have more political access than a Black one is not based on the view of the White racist that Blacks are inherently inferior. The White voter believes that Blacks and Whites have inherently equal abilities and skills, and acknowledges that it is racism that has led to the exclusion of Blacks. Still he continues to select a White candidate over a Black one, even as he rues the racism that leads him to do so in order to elect a candidate who faces fewer obstacles in getting the job done for constituents.

Finally, a White voter may vote for a White candidate in the absence of any other information out of indifference.\textsuperscript{270} While the voter is indifferent to the race of his representative, he is still committed to participate in the political process of elections. At the polling booth he needs to choose between two candidates. The only information he has about the candidates is their race - one is Black and the other is White. Paradoxically, the White voter chooses the White candidate because he is indifferent to race. He looks for some characteristic - any characteristic - that he has in common with the candidate. The characteristic could be the high school he went to, the neighborhood he lives in or the sport that he plays. In the absence of any other information he uses race as a common

\textsuperscript{268} Congressman J. C. Watts is a Black who is not generally associated with pro-poor policies and Congressman Bernie Sanders is an advocate of these policies.
\textsuperscript{269} Popkin (1991), p. 61.
\textsuperscript{270} The post-racial White voter for whom race is just another characteristic among many.
characteristic - something he has in common with the candidate - to choose the White candidate over the Black one. The White voter here does not use race as a proxy for something else - say ideology, interests or access. It is precisely because this White voter is indifferent to race (unlike the White racist who sees race as the most important factor) that he chooses the White candidate over the Black one.

Not all polarization is racist, i.e., based on hostility to Blacks. Rather, White voters can often use race as a proxy for ideology, interests and access. These White voters may support affirmative electoral measures that encourage the participation and chances of Black candidates winning elections without unfairly restricting their choice. Instituting such measures will not require interfering with the freedom of association of those voters. These measures will simply seek to overcome the obstacles Black candidates face because of stereotyping by White voters. While this stereotyping is not by itself irrational or even unreasonable when carried out by individual voters in the context of an election with limited information, it can lead to an unfair electoral process for Black candidates. Left liberals thus argue that affirmative measures that go beyond compact districts are required to ensure all persons are treated as equals in an electoral process.

While White liberals concede that stereotyping based on race can pose an obstacle to Black candidates, they argue that stereotyping, i.e., the use of demographic and other characteristics as a signaling device, is an inherent part of every electoral process. The state cannot be asked to compensate for all kinds of stereotyping and signaling mechanisms that voters use to cast their ballot. They argue that many of the challenges faced by candidates at a disadvantage can be overcome through general measures such as campaign finance reform that increase opportunities for new candidates. Addressing

271 "Finally, I note that in most contexts racial classifications are invidious because they are irrational. For example, it is irrational to assume that a person is not qualified to vote or to serve as a juror simply because she has brown hair or brown skin. It is neither irrational, nor invidious, however, to assume that a black resident of a particular community is a Democrat if reliable statistical evidence discloses that 97% of the blacks in that community vote in Democratic primary elections. For that reason the fact that the architect of the Texas plan sometimes appear to have used racial data as a proxy for making political judgments seems to me to be no more "unjustified," and to have no more constitutional significance, than an assumption that wealthy suburbanites, whether black or white, are more likely to be Republicans than communists. Requiring the state to ignore the association between race and party would be no more logical and potentially as harmful, as it would be to prohibit the Public Health Service from targeting African
particular challenges faced by a subgroup of candidates can pose problems that will undermine the very purpose of elections, which is to allow citizens to select representatives of their choice. White voters point to two sets of characteristics that can lead to "unfair" (dis)advantages for candidates – the first is candidates who have unpopular opinions (the Marxist candidate or the Green candidate) and the second is personal traits (the handsome candidate or the eloquent candidate). These are all "unfair" (dis)advantages that some candidates will have over others. They are unfair to the extent that these are not always characteristics that are necessary in a good representative. Nevertheless voters are either directly or indirectly influenced by the opinions or looks or personality traits of a candidate. If opinions and personal traits are permitted as signaling devices, why shouldn't race also be? If the state is expected to offset the disadvantage Black candidates face due to the use of race as a signaling device, shouldn't the state also offset the disadvantages faced by the Marxist and Green candidates or the balding, stammering and plain candidates? For left-liberals what justifies rectifying the disadvantages of Blacks and not those of Marxists or those without smiles, is that Blacks have been historically excluded as a social group in the Unite State in a way that Marxists and those without a smile have not.

Consider the distinctions between the disadvantage suffered by the Marxist candidate and the Black candidate. One distinction may be that the former is a political opinion that can be changed, while the latter is a racial identity that cannot. Persons are born Black or White, but they are not born Marxists or liberals. If they suffer disadvantages as Marxists, they can always change their minds and run as liberals. But this underestimates the extent to which a political opinion is intrinsic to a person. While it may not be a physical characteristic, being a Marxist may be so important to a person that he cannot describe himself as something else, without lying. The fact that a person can change ideology, but not race, does not mean that Marxism cannot be even more intrinsic to who he is, than Blackness is to the Black candidate. Another distinction

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American communities in an effort to increase awareness regarding sickle cell anemia." Justice Stevens dissent in Bush v. Vera [ 116 S. Ct. 1941 (1996).]

272 In the case of the Marxist and Green candidate we assume that the voter is voting against the candidate for the wrong reasons — namely prejudice against their views and not the capability of the candidate to represent them in reality.
may be that Marxism is a political ideology and therefore a good proxy for what a representative will do, but race is not. Therefore non-Marxists’ refusal to vote for Marxists is correct because they differ in their views, but Whites’ refusal to vote for Blacks is mistaken because they do not. But this distinction between the Marxist candidate and the Black candidate is also overstated. As we noted previously, race can be a good proxy for a candidate’s political ideology. Furthermore, a Marxist could very well pursue policies in practice – universal health care, progressive income tax, better environment - that are supported by many voters in the United States, who may still continue to vote for Republicans out of hostility to Marxists. They simply disagree with the opinions of the candidate, not the policy he will pursue once in office. So like the Black candidate in the United States, the Marxist candidate suffers an unfair disadvantage due to stereotyping.

It is the third distinction - that Blacks have been historically excluded as a social group in a way that Marxists have not - that justifies rectifying the disadvantage of Blacks but not that of Marxists. Marxists in the US have clearly experienced social exclusion and political hostility, however, they have not faced the kind of exclusion experienced by Blacks, historically. While it is possible to imagine a situation under which Marxists, as an ideological group, may have suffered more social and political exclusion than Blacks, as a racial group, that is simply not the case in the United States. The reasons for rectifying the disadvantages of Blacks and not of Marxists are very much a result of the peculiar history of the United States and not a general principle that applies to political opinions over racial groups, in general.

Left liberals also distinguish personal traits that are a happenstance of natural circumstances from the rules of political and social cooperation that affect a person's life

273 This does not mean that being Marxist to him is a fundamental moral obligation. It simply means that his analysis of the world has led him to accept Marxism as a valid description of how it functions.
274 This hostility can stem from any number of sources – the US history of anti-communism, the association of Marxism with totalitarianism, fear of being labeled a Marxist or simply ignorance.
275 “...the VRA can be sensibly construed as outlawing vote dilution without resorting to any general theory of fair representation. All one need is the racial prejudice standard, which is far more modest than any general theory of representation. The standard focuses on one form of unfairness that has been especially harmful to our nation’s history. It is not incompatible with the idea that there are other forms of unfairness, for example prejudice based on sexual orientation.” Altman, p. 195.
The US Supreme Court has also kept open the possibility that other forms of unfairness in elections, including the claims of political groups are justiciable. Davis v. Bandemer, 478 U. S. 109 (1986).
chances, including equality of opportunity for political office. They argue that the state need not compensate for personal traits, such as a smile or speaking ability of candidates, because the advantages and disadvantages due to these traits are not all necessarily concentrated in the same individual. For example, while one candidate may be at an advantage due to her attractive smile, another may be at an advantage due to her eloquence. While these advantages are important they do not lead to a systematic advantage of one group of candidates - those with attractive smiles - over others - those who are eloquent speakers. Race differs from these characteristics in that it is not simply a personal trait in the same way a smile is. Rather the life chances of a person who belongs to a particular race are very much shaped by her membership in a social group. While those without charming smiles may suffer disadvantages in comparison with those with them in different social interactions, they have not experienced social and political exclusion in a way that Blacks have. And it is this distinction - that Blacks have been historically excluded as a social group in a way that those without smiles have not - that justifies rectifying the disadvantage of Blacks but not those without smiles.\footnote{This is not to deny that there may be practical reasons for not rectifying the disadvantages of those who lack charming smiles - limiting the disadvantages, such as banning TV appearances, may affect other important interests.}

Left-liberals argue the state is obligated to address this disadvantage, if it practically can.

White liberals, unlike white supremacists, agree that racial polarization can be addressed through special measures that go beyond race neutral districts. They thus accept that if it is necessary to overcome the disadvantages Blacks face due to such polarization, the electoral system in the United States should go beyond race neutral compact districts.

\section*{IV. Race Conscious Districts to Special Measures}

Black liberals support race conscious districts that are not compact. They argue that race conscious districts are special mechanisms that facilitate the possibility of Black voters electing representatives of their choice.\footnote{The Black liberal position is derived from “Keeping the Faith: Black Voters in the Post-Reagan Era”, Chapter 2, Lani Guinier (1995); Jane Mansbridge (1996); James Blacksher (1998). Lani Guinier’s current} They argue that race conscious districts are not incompatible with individual equality, where race is a good proxy for the interests
of a group and/or the disadvantages they face in getting elected. For Black liberals, racial
categories in the United States provide an effective indicator of the kinds of challenges a
group faces, ranging from discrimination in housing and employment to social and
economic inequality. They argue that when communication between Black constituents
and White representatives are impaired by distrust, when important substantive interests
of Blacks as a group are still not fully defined, and because Blacks have historically
suffered disparagement of their status as citizens, mechanisms that promote special
representation are morally desirable.278

Race conscious districts are one way in which group interests based on territory
can be balanced with group interests based on race. Like pursuing most group interests,
Black liberals do not deny that the goals of considering the interests of Blacks, as a
group, and the interests of people living in a geographical territory, as a group, can
sometimes be in tension with each other. For example, housing patterns based on race do
not easily coincide with geographical boundaries. Still this kind of balancing of group
interests is precisely what electoral mechanisms are all about. The groups may be racial,
socio-economic, geographical or professional. Black liberals argue that elections are
ultimately about groups electing representatives to represent them, and that Blacks, as a
group, are simply engaging in the electoral process, like any other, when they elect Black
candidates.279 Given historical patterns of racial segregation and the continuation of racial
polarization, Black liberals argue that race conscious districts are particularly important
to ensure that Blacks are effectively represented in the United States.

But many left-liberals object to race conscious districts that are based on a
territorial delineation of interests and a first-past-the-post system. First they object that
geography is not an effective proxy for interests. Second they object that this system
leads to wasted votes. Third they object that it discourages diversity in the legislature.
And finally they object that race conscious districts prevent cross-racial electoral
colitions between Black and White voters that can promote political equality. I argue
that apart from the final one, other Left-liberal objections to the black liberal advocacy of


position has shifted towards one that is more accurately described as a left-liberal one. This shift is
discernible in her later essays (Guinier, 1995).
278 Jane Mansbridge, 1996.
race conscious districts are misplaced. But, in the face of possible cross-racial coalitions that lead to the success of Black candidates and the pursuit of Black interests, Black liberals concede that race conscious districts may limit rather than expand Black representation.

IV.a. Geography is not an effective proxy for interests

Left-liberals argue that territorial forms of representation that elect representatives from single member districts to represent a group of voters with diverse and contradictory interests are ineffective, at best, and unfair, at worst. Voters with different even contradictory interests are grouped in the same electoral district. This makes an electoral district based on geography a poor proxy for the interests of voters. In a system where one person is elected to represent a geographical district, it is implausible at best and unfair at worst to expect a representative with a completely different ideology and interests (for example a Christian fundamentalist) to represent someone else (for example a Jewish liberal). Representatives will invariably favor representatives who share their views over those who do not. They will provide services and support to voters who voted for them, while ignoring voters who did not. In some contexts, where many candidates vie for election splitting up the vote, representatives elected by only a fraction of the voters can end up representing the entire district.

Black liberals respond that all forms of representation – including proportional representation, which is usually presented as an alternative to territorial representation - are ultimately based on some territorial unit. In some cases the territory is a single district with a small fraction of the population. In others it may be a province or a state with a larger section of the population. And in still others it may be the entire political community, i.e., those who live within the national territory. These are all geographical entities. The question in representation is not whether or not an electoral system is based on a territorial boundary, but the extent of the territorial boundary it ought to be based on. Some prefer smaller boundaries, while others prefer larger ones. The size of the

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279 "The concept of Representation necessarily applies to groups: groups of voters elect representatives, individual voters do not." Justice Powell, in *Davis vs. Bandemer*, quoted in Guinier (1995; 125).


territorial boundary is the result of an international system of states based on territorial sovereignty. Liberals may lament the limitations of this system of popular sovereignty based on territory, but they still have to work within it.\textsuperscript{282} Black liberals argue that race conscious districts are one way politicians can structure the electoral process to balance interests defined along geographical lines with interests defined along racial lines. The importance of drawing district boundaries along racial lines stems from the “encompassing” nature of membership in the Black community as a racial group. Membership not only affects the personal chances an individual may have, but also social and political ones. Race conscious districts provide an opportunity for Blacks to organize so as to pursue their interests in the legislature. Most importantly race conscious districts have been the single most important practical measure for increasing Black representation.\textsuperscript{283}

\textit{IV.b. Wasted Votes} The next argument against race conscious districts is that, like other geographical districts, they result in wasted votes. The intuitive left-liberal argument against a wasted vote is that voters are likely to have greater influence over and feel more connected to their representatives and the legislative process if they have a greater opportunity to cast their votes for a winning candidate. Voters seek to influence the legislative and political process by electing representatives. Voters feel that their vote can make a difference politically when they vote for a winning candidate. Casting a vote for a winning candidate also connects voters to the candidate who is now their representative and the political process of which she is a part. This keeps voters politically mobilized throughout the political and legislative process and not just at election time. When representatives know that every vote counts for somebody’s

\textsuperscript{282} I have summarized what is a longer argument between Black liberals (BL) and left liberals (LL) that takes the following steps:

LL – voters with different ideologies and interests are grouped together in the same territorial district.
BL – Some category needs to be used for organizing representation, and geographical location provides a reasonable one.
LL – Voters should be able to choose their own category. Race conscious districts compel voters to be categorized according to geography and/or race.
BL – Geography ensures that benefits accrue to all – those who did not vote for a candidate cannot be excluded from driving on the new roads built by the representative for those who voted for him.

Also see Beitz (1989), pp. 132-140.

\textsuperscript{283} Davidson and Grofman.
election they will listen to voters. This will improve the responsiveness of representatives to their electorate and will ultimately lead to better legislative outcomes.\textsuperscript{284}

Black liberals respond that the requirement that “no vote be wasted” is impossible to fulfill in any electoral system. Elections are processes by which voters select some candidates over others. Any representative government will involve the election of some candidates instead of others. And the basis for choosing one over another will be the number of votes a candidate obtains. Those who get more votes are elected over those who get fewer votes. Elections are ultimately majoritarian processes. Short of doing away with elections altogether, the claim that votes should not be wasted can never be satisfied.

\textit{IV.c. Discourages Diversity in the Legislature.} Left liberals argue that race conscious districts, like any other geographical districts continue to limit diversity in the legislature. While race conscious districts may be preferable to race neutral districts in terms of racial diversity, they ignore other forms of diversity in a political community. Social diversity does not vary only along a Black – White binary. Rather there are many forms of diversity – ranging from sexual preference, cultural membership and gender, to political ideology and regional origin. Race conscious single member districts only focus on racial diversity, while ignoring other forms of diversity. Race conscious districts impose racial divides on communities that are not necessarily racially divided or where racial divides are less important than other forms of division, such as religious belief.\textsuperscript{285} Therefore left-liberals object to race conscious districts. They argue that other measures, such as proportional representation can provide greater diversity while redressing the

\textsuperscript{284} Many of these points are made by Guinier (1995).

\textsuperscript{285} “Indeed in sorting through the competing claims, the districting process may carve up politically viable communities of interest. Without regard to race, districting arbitrarily limits electoral choices based solely on where particular voters happen to live. A recurrent example, which the Supreme Court confronted in United Jewish Organizations v. Carey, is that, in order to create majority-black districts, racially homogenous white districts are also created on the assumption that white voters are a racially undifferentiated mass. The result often is that moderate white voters are submerged in the resulting majority-white district, separated from Blacks who would form coalitions with them, but for the subdistricting.” Guinier (1995), pp. 84-85.
political inequality Blacks face in voting for candidates of their choice and being elected to the legislature.

Left liberals provide three reasons that make greater diversity in the legislature desirable. First by including many diverse viewpoints in a more representative legislature that tends to “mirror” the views of the voters, citizens feel included in the decision-making process of the legislature. Second, a legislature that has representatives with many more perspectives – whether ideological, ethnic, social and regional – will promote deliberation over the common good more than a legislature that has fewer perspectives.\textsuperscript{286} Third the presence of their representatives enables groups they represent to better secure their material interests.

Black liberals have two responses to these objections to race conscious districts. First, Black liberals argue that the deliberative process is not confined to the legislature.\textsuperscript{287} It can take place in the writing of party platforms, the campaigns for office, newspaper and TV, in secondary associations and in even more informal social settings. Minority political perspectives can be incorporated through any number of settings. Second Black liberals respond that left liberals ignore the distinction between including diverse groups in the legislature and including groups who have historically been excluded. Black liberals make a distinction between minority groups who have been discriminated against socially and excluded politically from participating in both voting and running for office because of their social origin (Blacks), and minority groups who have simply lost out in the political process because they have failed to mobilize the political support necessary to win representation (billionaires, communists or prohibitionists). Black liberals argue that general support for diversity does not address the specific political disadvantages faced by social groups that have been historically discriminated against in the electoral process.\textsuperscript{288}

\textit{IV.d. Race conscious districts do not overcome racial polarization}

\textsuperscript{286} Chwe (1999).
\textsuperscript{287} Beitz (1989), p. 137.
\textsuperscript{288} Though, measures that increase diversity in the legislature may be one practicable way of increasing black representation.
Left-liberals object that race conscious districts are a politically ineffective way to elect Black representatives and pursue substantive Black interests because they ignore the possibility of securing White support for Black candidates. Left-liberals accept there is polarization in voting between Blacks and Whites that leads to a systematic electoral disadvantage for Blacks. However, they argue this polarization is not all racist. They make a distinction between racist polarization – where White voters express hostility to Blacks and racial polarization – where White voters use race as a proxy for a candidate’s interests, ideology and access. They believe that racial polarization is at least as important an obstacle to Whites voting for Blacks as racist polarization. Left liberals point to the re-election of all Black incumbents of Black majority districts from White majority districts, following Shaw and its progeny.\(^{289}\) Left liberals argue that racial polarization, unlike racist polarization, can be overcome through political mobilization and institutional design that leads to greater information about the policies and positions of Black candidates.

White voters will then vote for Blacks on the basis of whether or not Black candidates represent their interests and not on the basis of their race. Left-liberals argue that because race conscious districts are designed on the basis that all polarization is racist, Black liberals fail to consider institutional mechanisms that breakdown polarization in voting. Thus the choice for those who support greater Black representation in Congress is not only between patiently waiting for Whites to change their racist attitudes (race neutral districts) or assuming that Whites will never vote for Blacks (race conscious districts). Left liberals argue that Black liberals should consider special measures that simultaneously remedy the electoral disadvantages that Black voters and candidates experience and breakdown racial polarization in voting.

Black liberals concede that there is a distinction between racial and racist polarization analytically, but object that it is not clear practically. It is rarely clear in a particular White voter whether opposition to a Black candidate is based on her assumption about his views rather than her hostility to his racial background. In most cases, Black liberals argue there is a tendency to overestimate the willingness of White

\(^{289}\) The congressional elections of 1996 led to the re-election of all Black incumbents. These Black congressmen, in many cases, were the first to have ever been elected from their states since the
voters to vote for Black candidates. Aware that attitudes of racism are no longer considered publicly acceptable many White voters, in opinion polls exaggerate their acceptance of Blacks. Moreover, it is unclear in the White voter population as a whole, whether polarization is racial or racist. While Black liberals accept that there may be some Whites for whom polarization is indeed racial, they argue that distinguishing those Whites and securing their vote is practically a difficult task. Moreover, Black liberals point to the miniscule number of Black candidates elected from White majority districts to justify the belief that polarization is rarely racial and usually racist.

Under these circumstances, Black liberals argue that structuring electoral systems on the basis of racial polarization will undermine Black electoral opportunity still further. To ensure that Blacks have equal opportunity to run for office and vote, Black liberals argue the electoral system should be structured on the basis of the worst case - that polarization is racist – not on the best case – that it is racial. If polarization is racial, then the cost of a mistaken judgment is simply more Black representation. If the electoral system is structured on the basis that polarization is racial, but polarization is really racist, then the cost of a mistaken judgment is less Black representation. Black liberals thus continue to support race conscious districts as the safest means of ensuring Black representation under conditions of racist polarization.

Left liberals concur that it is hard to distinguish racial from racist polarization in practice – through say opinion polls. However, they differ with Black liberals about what the institutional response to this difficulty should be. They disagree that structuring electoral institutions on the basis that polarization is racist will always lead to greater Black representation, than doing so on the basis that polarization is racial. Assuming racist polarization where polarization is racial can actually minimize electoral opportunities for Blacks. Moreover left liberals argue that working on the basis of racist polarization invariably leads to a tension between substantive and descriptive representation for Blacks. If polarization is racist, then left liberals argue race conscious districts lead to a greater Black presence at the expense of more substantive

Reconstruction.

290 For an account of this and disadvantages Black candidates face see “Voting Discrimination against Black Candidates, Chapter 2, Reeves (1997).
representation of Black interests in Congress. They point to the fact that when Black voters are packed together in one safe district with 65% of the voting age population, they have less influence on adjacent districts. While this may result in the election of a single Black democrat in a safe district, it also increases the possibility of the election of White republicans over White democrats in adjacent districts. After a race conscious district is drawn, instead of two White democrats, the election can result in a single Black democrat and a single White republican. This may adversely affect the substantive interests of Blacks in Congress. A larger group of liberal Black representatives will find themselves with little influence in the face of an even larger group of conservative Republicans. Ultimately left liberals argue there is a tradeoff between the substantive interests of Blacks and the presence of Black congressmen when race conscious districts are used as a mechanism to increase Black representation.

Black liberals resist the left-liberal claim that there is a trade-off between descriptive and substantive representation for Blacks. They respond that in many cases this view overstates the effect of race conscious districts on the partisan balance of Congress. But more importantly from the Black liberal perspective, this left liberal claim concedes what Black liberals have been saying all along – that voting is so polarized that White voters will not vote for Black candidates even when they share the Black candidates ideology. White voters who are Democrats would rather vote for White candidates who are Republican and differ in their political ideology and party affiliation, than for Blacks who are Democrats. The presence of a trade-off demonstrates this. They also argue that the left-liberal critique of race conscious districts once again puts the onus for dealing with discrimination on Blacks rather than Whites. Because White voters engage in discrimination by refusing to vote for Black candidates, Blacks are compelled to choose between descriptive or substantive representation – a choice that Whites do not face.

Left liberals concede that racist polarization simply cannot be overcome by institutional mechanisms and political mobilization. The only mechanisms available to deal with racist polarization are those like race conscious districts that make the best of a bad situation. These mechanisms will be based not on overcoming and changing White

291 Cameron et al.
hostility to Blacks, but on limiting the cost of such hostility to the opportunities of Blacks through political design. If racist polarization is the biggest obstacle to Black candidates winning election, Blacks will invariably have to choose between descriptive and substantive representation. The best that left liberals concerned about political equality for Blacks can do is remind them of this tradeoff at the risk of sounding like they are “blaming the victim.”

However, left liberals argue that this is not the only choice Blacks face. They believe that if it is hard to distinguish racial polarization from racism, polarization, designing institutions on the basis that all polarization is racist will discourage cross-racial voting and even aggravate racial polarization.292 Left liberals argue that racial polarization can be overcome through political mobilization and institutional design that leads to greater information about the policies and positions of Black candidates. White voters will then vote for Blacks on the basis of whether or not Black candidates represent their interests and not on the basis of their race. While they concede that this possibility at this point is just that – a possibility – they argue that the Black liberal response of race conscious districts effectively precludes it. Finally, if left–liberals are wrong, i.e., if all polarization is indeed racist, fewer Black candidates will be elected. But this is no different from a context of racist polarization where there is a trade-off between substantive and descriptive representation. There is a trade-off between descriptive representation and substantive representation in the design of electoral institutions in all three cases – if Black liberals are right or wrong that polarization is racist or left liberals are wrong that polarization is racial. The only instance where such a trade-off between descriptive and substantive representation may not be necessary is if polarization is racial. Black liberals are thus willing to consider alternative electoral measures to race conscious districts that increase Black representation and diminish racial polarization in voting. Black separatists, however, believe that White voters will never vote for Blacks and will not look for institutional means that seek their votes.293

292 Though not racist polarization.
293 I want to emphasize that both Black liberals and Left liberals can support permanent race conscious districts if they believe that it will increase Black representation and overcome racial polarization. The distinction between them lies not in their common support for race conscious district, but in their differences over the willingness to look for measures that breakdown racial polarization.
V. Conclusion: A Modest Reformist Proposal

I have argued, in this chapter that liberals, whether White or Black, who accept the presence of racial polarization should support affirmative measures that increase black representation in Congress. White liberals differ from White supremacists in their support for such measures, and Black liberals differ from Black separatists in their belief that such measures do not only depend on enabling Black voters to vote for Black candidates. However, agreeing that special measures are required to increase Black representation in Congress does not mean agreeing on what measures are. In this section, I propose a modest reformist alternative – rotating race conscious districts - to the current three options faced by supporters of greater Black representation. The first is simply to acquiesce with race neutral districts and hope that White voters will change their attitude over time and vote for Black candidates. The second is to keep litigating in the hope of overturning the Supreme Courts rulings and reverting to race conscious districts.294 The third is to press for radical electoral reform such as proportional representation.295 I then address objections that rotating race conscious districts aggravate racial polarization, are impractical and lack constitutional validity.296

In a 1992 decision - Shaw v. Reno - the United States Supreme Court held that the 12th Congressional District of North Carolina, violated the 14th Amendment to the United States Constitution. The Court decided "a re-apportionment plan may be so highly irregular that, on its face, it rationally cannot be understood as anything other than an effort to segregate voters on the basis of race." Race conscious districts in the South, including North Carolina's 12th District, were redrawn on a "race neutral" basis to comply with this decision and several other decisions that followed, resulting from challenges to race conscious districts. These districts, drawn to comply with the Voting Rights Act, had elected the first Black congressmen to the United States Congress since the Reconstruction. Black candidates, subsequently competing in majority White districts,

294 This is unlikely, given the current composition of the Supreme Court.
295 This strategy is being adopted at the level of local government elections. While I am sympathetic to this approach, it is unlikely to be adopted in the near future in congressional elections.
296 By constitutional validity, I simply mean to address the plausibility that rotating race conscious districts will not be found in violation of the Equal Protection Clause by the current Supreme Court of the United States.
were pessimistic about their prospects for electoral success at the 1996 congressional elections. After years of white prejudice and Jim Crow laws that systematically excluded Blacks from wielding political power, they felt that they needed to contest from majority Black districts to gain a foothold in Congress.\textsuperscript{298} However, the Black incumbents in all of the affected Black majority districts were re-elected from districts with White majorities.

White liberals heralded the results as a sign of the willingness of White voters to vote for Black candidates.\textsuperscript{299} Black liberals cautioned that these Black candidates won only because they were the incumbents. However, these electoral results indicated that important premises in these two positions were vulnerable to challenge. White liberals could no longer argue that such districts invariably aggravated racial polarization.\textsuperscript{300} Rather in the districts challenged in Shaw and its progeny, Black candidates utilized the opportunity provided by their increased profile, name recognition and political influence to successfully appeal to White voters, not to ignore them. While the fact that they had to contest in majority-White districts made this political appeal necessary, it was the fact that they had already contested in majority Black districts successfully that made this appeal possible. Black liberals could no longer argue that Whites would not vote for Blacks, making Black-majority districts the only effective means of overcoming racially polarized voting.\textsuperscript{301} While the Blacks who contested were incumbents from formerly

\textsuperscript{297} Shaw v. Reno (509 U.S. 630), p. 15.
\textsuperscript{298} "I think this could very well be a beginning of the end of what many of us have been looking at as a second Reconstruction era." Cited in Cooper (1994), p. 14.

\textsuperscript{299} The "Apellees Brief on the Merits" in Hunt v. Cromartie, No. 98-85, is an example of this: "Contrary to predictions by some Shaw critics, every African-American who had been originally elected to Congress from a majority-minority district was re-elected in redrawn districts - except for Representative Cleo Fields, who, instead of seeking re-election, ran for governor of Louisiana. In North Carolina two African-Americans, Melvin Watt and Eva Clayton, who had been elected three times under the 1992 plan, were handily re-elected on November 3\textsuperscript{rd} 1998 even though each ran in a district with a lower percentage of Black voters than before. Such results demonstrate that African-American candidates do not need a majority-black district to be elected if they campaign vigorously to gain support of all voters, rather than only voters of their own race." fn 15, p.8.

\textsuperscript{300} "By perpetuating stereotypical notions about members of the same racial group - that they think alike, share the same political interests, and prefer the same candidates - racial gerrymander may exacerbate the very patterns of racial bloc voting that majority-minority districting is sometimes said to counteract. It also sends to elected representatives the message that their primary obligation is to represent only that group's members rather than their constituency as a whole." Justice O'Connor, Shaw v. Reno.

\textsuperscript{301} See pp. 47-50 of State Appellees Brief in Shaw v. Barr, No. 92-357, submitted by Michael F. Easley, North Carolina Attorney General. For a systematic scholarly version of this argument see Davidson and Grofman (1994).
Black-majority districts, they still won with the support of White voters in White-majority districts. Ultimately, Whites did vote for Blacks. But they did so because Black candidates were able to overcome the disadvantage of race with the power of incumbency.\textsuperscript{302}

Unfortunately, both sides in the debate over Black political representation used these results to re-affirm their preferred electoral mechanism - whether it was White liberal support for "race neutral" single member districts or Black liberal support for race conscious districts - rather than re-consider them. These results suggest the possibility of a new electoral arrangement – rotating race conscious districts – that can be adopted by state legislatures seeking to increase Black representation in Congress. Rotating race conscious districts use race conscious criteria for one electoral cycle. However, even in this electoral cycle, race neutral criteria such as compactness, community, and incumbency are also taken into account for the state as a whole. After a single cycle, these districts revert to race neutral criteria, where the race of the voter becomes irrelevant to the districting process. Over time, if Black voters fail to elect candidates of their choice due to racial bloc voting, the state legislature can once again resort to redrawing electoral districts along race conscious lines. This will enable Black candidates to get elected, if racial polarization is what prevents them from succeeding. There is nothing throughout this entire process that prevents White candidates from running for office in districts that are predominantly Black. This is no different from the situation faced by most Blacks who consider running for political office in the United States from districts that are predominantly White. I briefly address objections that this measure aggravates racial polarization, is impractical and will not be found constitutionally valid.

The first objection is that like other race-based measures, rotating districts will aggravate racial polarization. Even if the first round of race conscious districts did not lead to racial polarization, the very possibility of future race based districts, however temporary, may lead to White hostility. It may also lead Black candidates to ignore the

\textsuperscript{302} "It may very well be the case that attitudes in the South have changed for the better. But one thing is for certain: representing the old 11th District allowed me to run and win in the new 4th District without having to change my views, my gold tennis shoes, my braids or having to auction off my principle to the highest bidder." Quoted in Sack (1996).
concerns of White voters, rather than address them. There are two responses to this objection. First, Black representatives from race conscious districts pursued policies and supported measures that appealed to a significant fraction of White voters, even when they had no expectation that their districts would be redrawn as White-majority districts. They were able to point to the very record as congressmen built up at a time when their constituency consisted of a Black majority to appeal to White voters. This suggests that Black congressmen elected from race conscious districts work to diminish not aggravate racial polarization. If they did so, when they expected to continue to represent Black-majority districts, it seems even more likely that they will do so when they expect to represent White majority districts. Second, rotating districts are flexible and temporary measures that can be adopted or dropped depending on their impact on Black representation and racial polarization. If state legislatures find that rotating districts aggravate racial polarization or limit Black representation, they can always revert to race neutral districts or resort to other electoral arrangements.

The second objection is that redistricting requires considerable administrative and organizational effort on the part of state legislatures. Committees need to be convened, the views of citizens need to be ascertained and the voters need to be mobilized. This process becomes even more cumbersome when districts are drawn on race-based criterion and then redrawn on a race-neutral one. It will lead to significant administrative costs and burden state governments, politicians and not the least voters, themselves. While this practical concern was important in the past, it is less so today. Computer generated districting plans that can place voters block by block, make redistricting far less onerous than in the past. Politicians are well aware of which voters live where and how different plans will affect the electoral outcome with alternative districting plans. The process of districting has become highly technical with very little uncertainty and difficult in mapping out districts. Still the cost to voters of being shifted from one boundary to another cannot be completely discounted, particularly when this affects whom their representative will be. This cost will have to be balanced against the alternative – limiting opportunities for Black candidates to be elected or discouraging cross-racial coalitions in elections. Given the modest nature of this measure and its

303 It also suggests that Whites and Blacks have interests that are in common.
potential to significantly increase Black representation, the critique on practical grounds may not hold if race conscious districts are drawn for only a single election cycle every decade. Furthermore, rotating districts are more politically practicable than the main race neutral alternative for congressional elections – proportional representation. No new legislative initiative will be required since they are permissible under the existing statutes of the Voting Rights Act.

The final objection is that given the aversion of the United States’ Supreme Court to any racial classification, rotating districts are likely to suffer the same fate as race conscious districts. Like race conscious districts, they give dominant place to racial criterion for districting at the expense of traditional criteria such as compactness, contiguity, communities of interest, political subdivisions and incumbency. Even though a racial classification is being used for only one election, it leads to the same constitutional objections. Since Shaw v. Reno the Supreme Court has been steadily expanding the basis on which race conscious districts drawn to comply with the Voting Rights Act can be found in violation of the Equal Protection Clause – from race as the sole motivation, to race as a predominant motivation, and possibly to race as simply a motivation.

In Shaw v. Reno, the Supreme Court found that where racial classification was used to the exclusion of traditional districting practices “strict scrutiny” was required, i.e., the racial classification must be narrowly tailored to achieve a compelling state interest. While the Supreme Court assumed that complying with the VRA is a compelling state interest, it subsequently found in Shaw v. Hunt that the districts drawn in North Carolina were not narrowly tailored. The Court decided that alternative districts that considered traditional districting criteria and complied with the VRA could have been drawn by the North Carolina legislature. In Miller v. Johnson, the Court then proceeded to further restrict the possibility of race conscious districting. Strict scrutiny was now triggered if race is a predominant factor - not merely the sole factor – in

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304 “Today we hold that appellants have stated a claim under the Equal Protection Clause that by alleging that the North Carolina General Assembly adopted a re-apportionment scheme so irrational on its face that it can be understood only as an effort to segregate voters into separate voting districts by race, and that the separation lacks justification.” Justice O’Connor delivering opinion of the court in Shaw v. Reno [113 S.Ct. 2816] (1993).
drawing up districts. In *Bush v. Vera* the Court appears to be on the verge of deciding that the use of race in anyway for the purpose of districting violates the Equal Protection Clause. Finally, in a decision that threatens to severely limit efforts by the federal government to fight vote dilution under the Voting Rights Act, the Court held in *Reno v. Bossier Parish School Board* that “Sec 5 (of the VRA) does not prohibit preclearance of a redistricting plan enacted with a discriminatory but non-retrogressive purpose.” Under this finding, if a jurisdiction (city, county or state) enacts a voting procedure that has a discriminatory intent but is not retrogressive with regard to the prospect of minorities to participate in the political process, it should still be pre-cleared by the Justice Department or the District Court of the District of Columbia. All of these decisions suggest that the Supreme Court will find rotating race conscious districts in violation of the Equal Protection Clause.

However, there are hints that the Supreme Court may not find every measure to increase Black representation in violation of the Equal Protection Clause. The Supreme Court has yet to find the Voting Rights Act, and thus the intentional creation of majority Black districts, unconstitutional. A majority in dissenting and concurring opinions continues to find that there can be circumstances under which the intentional creation of majority-minority districts will not violate the Equal Protection Clause. Since it was

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305 “In our view, the District Court applied the correct analysis, and its finding that race was the predominant factor motivating drawing of the Eleventh District was not clearly erroneous.” Justice Kennedy delivering opinion of the court, *Miller v. Johnson* 515 U.S. 900 (1995).

306 “I cannot agree with Justice O’Connor’s assertion that strict scrutiny is not invoked by the intentional creation of majority-minority districts. Though *Shaw v. Reno*, 509 U.S. 630 (1993) (*Shaw I*), expressly reserved that question, we effectively resolved it in subsequent cases. Only last Term, in *Adarand Constructors Inc. v. Pena*, [115 S. Ct.2097] (1995), we vigorously asserted that all governmental racial classifications must be strictly scrutinized. And in *Miller v. Johnson* 515 U.S. 900 (1995) Georgia’s concession that it intentionally created majority-minority districts was sufficient to show that race was a predominant, motivating factor in its redistricting. Strict scrutiny applies to all governmental classifications based on race, and we have expressly held that there is no exception for race-based districting.” Justice Thomas, concurring judgment in *Bush v Vera* [ 116 S. Ct. 19141 (1996).

307 *Reno v. Bossier Parish School Board* and *George Price, Et Al., v Bossier Parish School Board* [Nos. 98-405 and 98-406].

308 This decision will lead to the Justice Department and the District Court of the District of Columbia to “place their stamp of approval on a state action that is in clear violation of federal law.” Dissent of Justice Stevens.

309 In her concurring opinion in *Bush v. Vera*, Justice O’Connor asserts that compliance with the results test of sec 2 of the VRA is a compelling state interest, and that the results test can co-exist with *Shaw v Reno.*
enacted in 1965, the Voting Rights Act has survived constitutional challenges.\textsuperscript{310} Rotating districts is a very modest reform aimed at increasing Black representation. While it takes race pre-dominantly into account for one election cycle, it does not do so for subsequent ones. If the process of electing Congressmen is evaluated over several election cycles, rather than simply a single one, rotating districts resort to racial classifications minimally.\textsuperscript{311} Ultimately even an admittedly modest measure to increase Black representation, like rotating districts, may not be found constitutional by the United States Supreme Court. It is ironic, that at precisely the moment when States that discriminated against Blacks for centuries are willing to institute measures to redress this past discrimination, the United States Supreme court has stepped in to block them.\textsuperscript{312}

\textsuperscript{310} For example, South Carolina v. Katzenbach, 383 U. S. 301 (1966).
\textsuperscript{311} Recently, in Hunt v. Cromartie the Supreme Court rejected a challenge to the district in North Carolina that was re-drawn from a majority-black district to one that was majority-White after Shaw II. This district was redrawn so as to protect the Black incumbent elected from the previously majority-Black district. The Supreme Court found that political identification – Blacks tend to strongly support the Democratic Party – was at least as valid an explanation as racial classification for the district boundaries.\textsuperscript{311} More importantly, from the point of defending rotating race conscious districts, is that despite an explicit challenge to the legitimacy of the incumbent on the basis that he was elected from an unconstitutional gerrymander (a fact that was not in question) the Supreme Court still upheld the new districts.
\textsuperscript{312} James Blacksher, “Dred Scott’s Unwon Freedom: The Redistricting Cases as Badges of Slavery”, \it Southern Changes, Fall 1998.
Chapter VIII

Conclusion

Concluding I briefly address two objections to the overall approach of this dissertation. The two are the multicultural objection that a political liberal approach is intolerant of minority groups and the liberal egalitarian objection that the political liberal approach ignores administrative costs.

Political liberals seek to justify special institutions that ensure political equality for minorities to non-members. They believe that institutions must be justified to non-members in ways that they cannot reasonably reject. The onus of justifying these institutions lies with the disadvantaged minority. If a minority community cannot explain the disadvantages they experience in ways that the majority understands and supports, they will fail to get institutions that rectify them. Multiculturalists object that this contractarian form of justification is ultimately skewed in favor of the status-quo. Those in the majority will have to be convinced of the injustice, and those in the minority will have to do the convincing. However reasonable members of the majority are, a political liberal approach is structured to place them at an advantage viz viz the minority. Multiculturalists argue that this is intolerant of minorities.

What multiculturalists see as a disadvantage for minorities, political liberals see as a protection. The discussion on special rights for cultural communities focused on the disadvantages that minorities experience in a political community. This is because in most societies it is minorities that struggle to ensure that they have adequate political representation, that their language is recognized and that they are not discriminated against. But requiring that claims for protections be justified in terms that cannot be reasonably rejected, also protects minorities from the unfair cultural claims from more powerful majorities. Where majorities seek measures to strengthen the use of their language, increase their political representation and pursue policies that favor themselves, they will also have to do so in ways that the minority cannot reasonably reject. Once groups, whether minorities or majorities are required to justify their claims in ways that non-members cannot reasonably reject, it precludes the unreasonable assertion of claims
based on power masquerading as justice.\textsuperscript{313} This is because in a political community where power is the only criterion for assigning rights, the more powerful majority is more likely to prevail over the less powerful minority. While the need to justify claims in terms that the majority cannot reasonably reject may lead to an additional justificatory burden for minorities, it is one that ultimately protects minorities from the majority.

A liberal egalitarian objection is that the political approach outlined in this thesis leads to considerable administrative inefficiency. For any state to adjudicate the competing claims of different groups and administer the plethora of policies and measures is both costly and confusing. Instead of setting up a complicated set of mechanisms to ensure minorities have access to their culture, liberals should simply ensure that they have equal access to income and wealth. Material goods, such as income and wealth, are easy to measure and uncomplicated to administer.

Political liberals do not deny that ignoring culture may increase administrative efficiency. However, they deny that there are special administrative costs associated with implementing measures that are cultural in nature, as opposed to those that are say economic. Economic regulation is a complex and complicated field. There are different laws for different kinds of businesses. There are different rights of association in different situations. There are complex ownership mechanisms. In this way regulating economic institutions and ensuring equality is difficult and challenging, but still possible. This is not that different from administering special measures that address the political claims of minority religious, ethnic and national groups.

Still, political liberals concede that special rights for minority cultural communities can be costly to administer. But for political liberals concerned with treating all citizens as equals, administrative inefficiency is less of a risk to a liberal society than political intolerance. When asked to choose between the two, they will invariably opt for inefficiency over intolerance.

There is a great deal of work that still needs to be done at the level of theoretically addressing the challenge of cultural pluralism in a political community. But this work cannot be done without directly engaging with the justice of the institutions through

\textsuperscript{313} Of course this does not prevent the unreasonable assertions of claims based on power by the majority, itself. Short of external intervention, there is no society in which this can be effectively precluded.
which these claims are resolved. Through two contentious cases, this dissertation made a plausible argument that a normative discussion of the practical institutions that address the claims of minority cultural communities is not only morally, but also politically desirable.
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