
Cultural Diversity and Liberal Society

A Case for Reprivatizing Culture

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Cultural diversity is an enduring fact of social life. Cultural differences exist within nations, and nations share a planet that is home to many different cultures. Even in the most homogenous of countries, where people recognize common ethnicity, speak the same language, and for the most part share one faith, there are subcultures shaped by conditions such as cast, occupation, wealth, and geography. In many countries, different ethnic, linguistic, and religious communities interact while seeking to retain their group identities. In the history of humankind, it is difficult to find a social system more tolerant of diversity than liberal society. Religious and ethnic minorities live under the protection of liberal institutions, and even groups that bitterly oppose liberalism flourish within liberal democracies so long as they observe the laws of the land. Yet not all cultures are compatible with liberalism in the classical sense, and the failure to recognize this fact may imperil liberal society. The challenge for liberal society is to maintain the greatest degree of freedom compatible with its own existence. In this article, I consider the classical liberal responses to certain key questions that cultural diversity poses. Note that I use the term *liberal* in its classical sense, not in the modern North American sense.

Cultural diversity raises five issues for liberal society. The first concerns the extent to which liberal society can or should tolerate the illiberal norms and practices of

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cultural communities within it. How can liberal society protect its institutional framework without harming itself? The second concerns cultural groups' claims for state aid in the preservation of their cultures. I consider here the politics and philosophy of multiculturalism. The third concerns cultural groups' claims for political self-determination leading to various degrees of devolution of power, from federal arrangements to complete separation. This kind of claim is most plausible when an ethnic, linguistic, or religious community occupies a historical homeland that has been forcibly absorbed into a larger state. The fourth concerns immigration into liberal societies. Will large-scale immigration of persons from culturally different parts of the world weaken the institutions of liberal society? If so, what is the appropriate liberal response? The fifth concerns the defense of liberal society against its external enemies. Samuel Huntington's thesis that in the post-Cold War era the major sources of conflict are not ideological but cultural, though flawed by its attempt to separate culture from ideology, nevertheless highlights the cultural element in the hostility that liberal society evokes (1996, 28). This last issue raises a plethora of questions that cannot be given the critical attention they merit within the limits of this article and hence must be left for another day.

In the following section, I explain the sense in which *liberal society* is understood in this article. I identify the fundamental value of liberal society as the freedom of choice. In the remainder of the article, I discuss in more depth the appropriate liberal responses to the first four issues raised. This article is not an attempt to resolve all these issues, but rather a discussion of the liberal principles relevant to their resolution.

Liberal Society

The liberal society of this inquiry is an ideal type that does not exist. Most societies that are considered liberal fall well short of this ideal. So why base this discussion on the nonexistent instead of the real? A useful way of improving our condition is to posit an ideal model and see how it works in relation to the problems we wish to solve. If the model is seen to work well, it will provide guidance to action, and if it is seen to fail, we still benefit from knowing why.

Two ideal models of liberal society compete for our attention. One is the natural order of the anarchist libertarian. In the natural order, all assets (including roads, rivers, and forests) are privately owned, and individuals deal freely with each other to satisfy their needs. No person or authority has coercive power over another, and necessary help in the protection of person and property from violence is secured by contract. There is no state and hence no state lands or state welfare (Hoppe 2002). This model, despite its great value as a description of the ideal condition of liberty, must be rejected not only for the pragmatic reason that very few people live in such conditions, but also because such a society is inherently unstable except perhaps on a very small scale. Among larger populations, as Nozick demonstrates, a minimal state

can arise from anarchy, even though no one intended this outcome or tried to bring it about, by a process that need not violate anyone's rights (1974, xi). If it can arise, then it will arise in some societies.

The second and preferred model is that of a society that enlists the protection of a minimal state. This model is preferred for two reasons. First, it is closer than libertarian anarchy to the historical experience of societies that have aspired to be liberal, so we have greater familiarity with it. Second, it acknowledges the need for coercion to preserve the freedoms that liberal society values. As Ludwig von Mises observed, "The liberal understands quite clearly that without resort to compulsion, the existence of society would be endangered and that behind the rules of conduct whose observance is necessary to assure peaceful human cooperation must stand the threat of force if the whole edifice of society is not to be continually at the mercy of any one of its members. . . . This is the function that the liberal doctrine assigns to the state: the protection of property, liberty, and peace" ([1927] 1985, 37). In John Locke's theory, the state is born out of the need for protection from the insecurity that results from every man's being the judge and enforcer of his own natural rights ([1689] 1960, 368). Individuals escape this state of nature by creating a supreme authority under a trust or social contract that obligates the authority to protect individuals' life, liberty, and estate. Nozick shows that even without a Lockean social contract, an ultraminimal state can arise through free contracting for protection services (resulting in a dominant protective association) and that such an ultraminimal state may become a minimal state by the acquisition of a *de facto* monopoly of law-enforcement power and its consequent moral obligations to offer protection to nonmembers within the relevant territory.

The minimal state is the condition in which a dominant protective association has an effective monopoly of the power to protect its members from having their natural rights violated by members and outsiders within a given territory. The minimal state will establish the physical infrastructure to perform all these functions—courts, bailiffs, sheriffs, police forces, and even defense forces to protect members from foreign invasion. There will be no state land other than land acquired lawfully from members. The minimal state has no claim to unowned land and cannot gain ownership by occupation except to the extent required to perform its minimal functions. It will not have the power by its own will to create, extinguish, or modify its members' rights.

This model requires two further clarifications. The first relates to the natural rights of those who have no capacity to invoke the law for their own protection, such as children. Under a protection contract, the buyers presumably gain protection of their rights and of their dependents' rights. Would a protective association that is a minimal state have a duty to protect a child against cruel treatment by a parent or other custodian? What would be the basis of such a duty? Nozick does not answer the question directly, although he argues that children possess rights in relation to parents (1974, 38–39). A protective association's obligation to enforce a child's right against custodial abuse may arise in one of two ways. First, parents may contract on behalf

of their children to secure their protection against all, including themselves. This provision is not fanciful because a parent can be expected to secure protection of his or her child in the event of the loss of custody to a separating spouse. Second, assuming that members would be loathe to live in a society that allows cruelty to children, protective associations that offer to protect children's rights may be preferred over those that do not. The association can give this protection without violating anyone's rights because no person has the right to violate the rights of defenseless individuals. It is also a nonredistributive service because we assume that members freely contract for this service. This function will not produce the kind of extensive criminal law that marks the modern (nonminimal) state. The state will be limited to undertaking, on behalf of a limited class of persons who are incapable of understanding their rights or of seeking legal recourse, the prosecution of wrongs known in classical jurisprudence as *mala in se*—self-evidently wrongful acts that harm life, liberty, and property. It will not have the power (currently assumed by the modern state) to create offenses at will (*mala prohibita*). It is worth noting that the modern state perpetrates its most outrageous assaults on liberty and property by criminalizing behavior that is perfectly lawful in the natural order of liberty. (For an illuminating economic history of criminal law, see Benson 1990.) The minimal state will have no such competence.

The second clarification is dictated by the dynamic nature of society. In a world in equilibrium, no need for legal change exists. The real world, though, is one of disequilibrium and evolution. In such a world, we still expect the basic rights concerning life, liberty, and property to remain permanent features of liberal society. Indeed, it is the persistence of these rights that enables us to survive and flourish in this uncertain world. However, the particular rules that protect these interests will need ongoing adjustment and clarification. Herein lies the logic of the common law—the law that historically has upheld the rights to life, liberty, and property by defining and adjusting the fundamental rules of conduct to new realities. This adjustment is an ongoing project in a liberal society. Consider the general rule that parties cannot withdraw from contracts formed by the meeting of the minds (*consensus ad idem*). When do minds meet when people transact on the Internet? Property rights may conflict in new ways as a result of new technologies. New tradable rights may have to be recognized as resources such as water go from surplus to scarcity. The minimal state in a liberal society will be required to develop an extensive jurisprudence concerning the protection of basic rights. The development of this jurisprudence may sometimes require legislation, as when rapid changes in technology or natural conditions create uncertainties concerning legitimate expectations. Hence, the minimal state in a liberal society will have in addition to local courts, an institution resembling the old High Court of Parliament of England. This institution was the highest court in the land and (unlike the present sovereign Parliament) was the ultimate custodian of the people's rights. It exercised legislative power only occasionally when “the development of common law rules . . . failed to keep pace with changes in social and economical conditions” or “when a too servile adherence to precedents . . . forced those rules into

a wrong groove” (Holdsworth 1936, 446–47). Legislative power could not be used to “affect the sacred principles of the common law created by immemorial tradition” (McIlwain 1910, 299–300).

The Fundamental Value of Liberal Society

Autonomy and Freedom of Choice

The core feature of a liberal society is the maximization of all individuals’ liberty. No person may interfere coercively with another person’s physical integrity, property, or free dealings with others. A member of a liberal society so conceived has autonomy within the bounds set by the requirement of the similar autonomy of others. The essence of autonomy is freedom of choice. Why is freedom of choice the basic value of liberal society? Before I answer this question, I must explain why I reject a competing view, recently advanced by Chandran Kukathas, that toleration and the freedom of conscience (as opposed to autonomy and choice) are the most basic values of liberal society (2003, 39). Freedom of conscience is the freedom to believe. Because freedom to believe allows one to believe or not to believe, it involves freedom of choice. Without freedom of choice, there can be no freedom of belief or conscience. Freedom of conscience cannot be taken away except by mind control, but in itself it has limited practical value. All persons are free to think, but not all have the freedom to act as they think best. To be able to act according to one’s conscience, one must be free to choose. If people have no choice but to act under the dictate of ruler, elder, church, or custom, then even though freedom of conscience may persist in theory, it will be defeated in practice.

That freedom of choice is the irreducible value becomes clear when we reflect steadily on the different motivations for human actions. Hume identified interest, affection, and principle as the primary motivations for human action. However, it is likely that most actions are driven by a combination of emotions. It is impossible for the external observer to decide which emotion predominates in another individual’s action, especially when the choice to act one way or another is a difficult one. It is easy to be principled when it suits our self-interest. It is also easy to clothe our self-interest in the language of principle. Even if we can read minds, it is not possible for us to unravel its complexities. Conscience itself is shaped by more basic instincts in ways that we cannot fathom. Hence, freedom of conscience is an unreliable basis to serve as the fundamental value of liberal society.

Having shown that freedom of choice is more basic than freedom of conscience in a hierarchy of liberal values, I now consider why freedom of choice is the most important value of a liberal society. The question is answered differently by natural-rights liberalism and by consequentialist liberalism, within which I include the school of evolutionary epistemology. Natural-rights liberals from Locke and Kant to Nozick regard the rights to life, liberty, and property as held by each individual by virtue of

being human. Nozick captures the essence of the natural-rights viewpoint when he asks:

Why not hold that some persons have to bear some costs that benefit other persons more, for the sake of the overall social good? But there is no social entity with a good that undergoes some sacrifice for its own good. There are only individual people, different individual people, with their own individual lives. Using one of these people for the benefit of others, uses him and benefits the others. Nothing more. What happens is that something is done to him for the sake of others. Talk of an overall social good covers this up. (Intentionally?) To use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has. (1974, 32–33)

The natural-rights argument is founded ultimately on the intuitive grasp of the worth of the individual as individual. Many consequentialist liberals who may or may not share this intuition and its logical implications seek a more testable theory of why freedom of choice is preferable to any system of state-regulated freedom. Mises explains: “We liberals do not assert that God or Nature meant all men to be free, because we are not instructed in the designs of God and of Nature, and we avoid, on principle, drawing God and Nature into a dispute over mundane questions. What we maintain is only that a system based on freedom for all workers warrants the greatest productivity of human labor and is therefore in the interest of all the inhabitants of the earth” ([1927] 1985, 22). History has lent great credence to this theory. Its epistemological basis was developed systematically by the thinkers of the Austrian school, among whom Carl Menger, Ludwig von Mises, F. A. Hayek, and Israel Kirzner are prominent. In a complex world, where knowledge of the particular conditions of time and place is dispersed and subjectively held, it is delusional to think that the state has the requisite information to improve the conditions of all by adjusting individuals’ choices. As Hayek remarked, “practically every individual,” given his subjective knowledge of time and place, “has some advantage over all others because he possesses unique information of which beneficial use might be made, but of which use can be made only if the decisions depending on it are left to him or are made with his active cooperation” (1945, 521–22).

Though freedom of choice is fundamental, a liberal society does not secure absolute freedom. In society, we cannot always do as we please without violating others’ freedom. My freedom to drive my car on the highway is limited by your freedom to do likewise. My freedom to dwell where I wish is limited by my duty not to trespass on others’ property. The idea of unrestricted freedom in society is a serious contradiction. A society is the outcome of cooperation among individuals, which rests on the observance of common rules of conduct that place restraints on individual freedom. Not only is unrestricted freedom a contradictory proposition when used in relation to

society, it is evident that restraints embodied in general rules of just conduct actually enhance freedom. (On this question, there is no better exposition than Hayek's in *Rules and Order* [1973].) These are the abstract and impersonal rules that comprise what Hume called the "the three fundamental laws concerning the stability of possession, translation by consent and the performance of promises" ([1748] 1975, 541). They promote freedom by delimiting the areas of individual autonomy and by making others' conduct more predictable. Every functioning society displays some form of these rules because without them cooperation is impossible. In illiberal society, these rules are weak and frequently violated, ignored, suspended, and even formally abrogated by rulers. In liberal society, they are relatively strong and command a high degree of fidelity on the part of rulers and citizens.

If the fundamental value of liberal society is the freedom of choice, do members of liberal society have a duty, individually or collectively, to take measures to enhance others' choices? The answer is categorically negative, given the model of liberal society adopted in this discussion. In this model, the state has only a law-enforcement role and has no legislative power to abrogate or adjust individual members' rights and freedoms. An individual has a negative duty not to interfere with others' rights and freedoms and hence with their lawful choices, but has no positive duty to help them exercise their rights and freedoms or to expand their range of choices. However, we need not take refuge in a definition to justify this liberal position.

The argument for affirmative action typically advanced by American liberals and social democrats is that in a liberal society individuals have not only freedom of choice but also the right to choice. Freedom of choice is distinct from the right to choice. The failure to appreciate this difference accounts for some of the major conceptual errors in liberal theory. In Hohfeldian analysis, a right entails a correlative duty on another's part (Hohfeld 1913–14, 32–33). My right to receive bread is meaningless unless someone else has a duty to give me bread. In contrast, a freedom (liberty) entails only a "no right" on others' part. In practical terms, a freedom entails a duty on the part of others not to interfere in my exercise of the freedom. It does not require another to provide me the wherewithal to exercise freedom. If an individual has a right in the Hohfeldian sense to a particular set of choices, then some others must have duties to provide these choices. Then those who have duties to create choices for others will have to sacrifice some of their own choices and hence freedoms. The argument assumes that society can make net gains in choice through compulsion and redistribution.

The attempt to achieve a net gain of choices through some central authority's allocation of rights and duties must be abandoned as an impossible task. No central authority or legislature can command the knowledge of particular facts needed to make the necessary calculations. Not only does such authority lack knowledge of individuals' personal condition and choices, but it also has no way of knowing how its affirmative measures will affect individuals' choices. Empirical studies bear out the

common observation that the extent of state regulation is generally inversely proportioned to the availability of choice in a society (Miles, Fuelner, and O'Grady 2005). The freer societies have proved far more effective in alleviating poverty than have the regulated societies. Private alternatives to state welfare exist, such as charity and private insurance. It is also worth noticing that only free people with property are capable of charity. The state is incapable of charity not only because it is a construct that has no conscience, but also because it owns nothing that it has not taken from individuals through taxation or expropriation.

What Unit Composes the Liberal Society?

Society consists of many associations, both formal and informal. Individuals are simultaneously members of many different associations, including the family; ethnic, linguistic, or religious community; caste; profession; workplace; school; and social club. There are also societies of societies, such as the European Community, the empires of the past, and even the international community of nations today. A liberal society tolerates more forms of diversity than any other type of society in the experience of the human race. Toleration allows some cultural communities within liberal society to engage in practices that may seem illiberal. These practices are tolerated so long as they do not rest on compulsion that violates the fundamental laws of the land. A liberal legal system will punish practices such as honor killings, forced genital mutilation of girls, and abuse of children when they come to light. However, within closed cultural communities, it is not always easy to detect violations of the law. It may rightly be asked whether a society that tolerates illiberal cultural practices may nevertheless be regarded as a liberal society. The answer depends very much on whether individual members have legal and practical means of leaving their illiberal communities. If they cannot, then it is best to treat that community as not being part of liberal society even though it may be located within the geographical boundaries of the state in which the liberal society is situated.

The Cultural Dimension of Liberal Society

In considering the issues of cultural diversity as they concern liberal society, it is critical to appreciate that liberal society itself is realizable only through the people's culture. A liberal society does not exist simply because its principles are known through the writings of great thinkers or because they are written down as law of the land. It exists only where liberal principles live in the people's actions and experience. That the principles are known and are part of the formal law of the land is a necessary but not a sufficient condition. They become living principles and living law when the general order of actions in the community embodies them. Liberal societies, even in the imperfect form that we experience, are a rare phenomenon in human history. A liberal society can disintegrate into anarchy or gravitate to tyranny. The institutional checks

and balances of liberal society are its own best safeguards. However, this framework of institutions itself rests on a liberal culture, not on black letters written on white paper. Law abidance, toleration, keeping promises, paying debts, taking responsibility for oneself, and enterprise within the bounds of the rules of just conduct are the ingredients of a culture that sustains liberal institutions. This cultural foundation has been weakened in recent decades, leading to what Francis Fukuyama (1999) calls the Great Disruption. Though blame for this decline is not easy to apportion, Gary Becker (1968, 1981), Charles Murray (1984), and Robert Higgs (2004), among others, have identified as major causes the perverse incentives created by the welfare state's misguided laws and policies. Maintaining a liberal political order is a perpetual challenge involving the nurture and protection of the institutions of liberty. Liberal societies need to take hard looks at themselves while they look for enemies without.

Illiberal Cultural Communities within Liberal Society

Complexity and Division within Society

A society comprises innumerable interacting groupings or orders, ranging from what Hayek termed *taxies*, or deliberately created organizations, to *cosmoi*, or spontaneously grown self-ordering systems. Between the typical organization, such as a corporation or government agency, and the typical self-ordered grouping, such as a clan bonded by common culture, are many kinds of units that combine organizational and spontaneous characteristics, such as family, church, and social associations. An individual almost certainly will belong in more than one group.

In the imperfectly liberal societies of the real world, some communities do not subscribe to all liberal values. This deviance may represent historical resistance to liberalization in a given country, as in India, where despite increasing liberalization of the country as a whole, caste status persists in some communities; or it may represent a new development that results from the very freedoms that a liberal society offers. Large-scale migration from less-liberal societies as well as home-grown movements can create illiberal social enclaves. Even an ideal liberal society that values freedom of choice above all else has the potential to generate illiberal associations. Whereas a despotic regime may impose its cultural preferences on the people or seek to ensure cultural homogeneity, a liberal society that gives preeminence to individual autonomy cannot ensure that illiberal groups will not form within itself. Religious cults that persuade people to surrender their property and their autonomy to the cult leaders arise in relatively liberal societies, such as the United States. In Europe, large-scale migration from Islamic countries has produced ethnic communities that do not accept individual autonomy, particularly with regard to women. How can or should a liberal society deal with such groups?

A liberal society confers freedom to associate and to disassociate. It is difficult to think of a community that succeeds in denying this freedom to its members as part of

a liberal society, even though it may have established itself within the physical space occupied by that liberal society. In contrast, persons living in liberal society are free by law to leave a group or association and usually have the means to do so.

The Problem of Exit Costs

A person's capacity to exit from an illiberal association depends on the costs of exit. These costs may be minimal, as, for example, if I choose to resign from the University Staff Club. Or, they may be very high, as in defecting from a criminal brotherhood or a tightly knit religious community. The question for liberal society is the extent to which the society may act collectively to reduce these costs without compromising its own principles. Kukathas gives a surprising answer: "The reply to this objection . . . is not to deny that exit can be extremely costly. It is simply to acknowledge that exit may, indeed be costly; but the individual may still be free to decide whether or not to bear the cost. The magnitude of the cost does not affect the freedom" (2003, 107). This view is correct if freedom is understood in the formal legal sense. The magnitude of the cost affects the actual exercise of the freedom. In fact, however, liberal societies exist because within them the costs of association and dissociation are relatively low. In the imperfectly liberal society in which I live, I can join or leave a political party, change my faith, or refuse to join the University Teachers' Union with little cost. If these costs were high, I would have great trouble convincing anyone that I live in a liberal society. The question is how these costs are lowered in a liberal society.

The answer is that enforcement of the basic rules of just conduct—those that prohibit violence to life, liberty, and property—reduce exit costs in liberal society. I can leave my associations with little cost because the laws of tort, crime, and contract protect my freedom to leave. These laws give me a degree of security from personal harm, allow me free movement and communication, and protect the possessions with which I may lead an alternative life. Competent and impartial officials and courts help me to gain the protection of the law. An association can persuade me to stay or bribe me to stay, but it cannot use means that the fundamental laws of the land forbid. In an illiberal society, by contrast, the costs of exit are high. Rulers and dominant sections of the society may confine individuals within a regime of control that they cannot avoid or escape. The means by which the regime confines its subjects entail the denial of their basic rights under the law. Their personal security and possessions, hence their capacity to lead an alternative life, depend on the rulers' dictates. Rulers of these societies typically place themselves above the law, and people have no recourse to an impartial and effective court.

Are the collective interventions designed to reduce exit costs (beyond enforcing the rules of justice) justified in a liberal society? The thinkers in the American school of liberalism, like their European social-democratic counterparts, consider liberty to be contingent upon the individual's capacity to form and revise a conception of the

good life (Rawls 1980, 525–28). Brian Barry argues that in a liberal society the right of exit must be a real right, as opposed to a merely theoretical one, so the cost of exit should not be excessive. He contends that the liberal state should intervene when costs are “external costs,” meaning costs that may not be legitimately imposed (2001, 149–50). The test of legitimacy is left unclear. Will Kymlicka states that a precondition of a good life is that “we be free to question our beliefs, to examine them in the light of information, examples and arguments that our culture can provide. Individuals must therefore have the conditions necessary to acquire an awareness of different views about the good life, and an ability to examine these views intelligently” (1995, 81). This approach leads to the claim that the liberal society should through mandatory education provide individuals collectively the capacity to form and revise their views of the good life (Rawls 1988, 267–68; Kymlicka 1995).

Choice cannot be overemphasized because it is fundamental to the freedom of even those who uncritically accept received culture. The question is the extent to which liberal society should coerce groups within it to provide for everyone the wherewithal for informed choice. Coercive exposure of children to state-determined education is unacceptable in liberal society for three reasons. First, it sets up the state as the judge of what is proper education, but the state has no such role in the kind of liberal society envisaged in this discussion. Second, it interferes with parental choice on how best to bring up children and hence overrides the autonomy principle of liberalism. Third, it compels individuals to create opportunities for others, thereby potentially affecting their own opportunities and choices.

The idea that the state is a better judge of a child’s welfare than the parents is a form of paternalism that claims for the state knowledge it does not possess. At any rate, parents do not seem to think it does. Judging by parental preference, state education has a poor record against private education. The migration of children from state to private schools has been increasing in recent times despite the much lower cost of state education. Parents are troubled not only by perceived academic inadequacies of state schools, but also by the kind of moral education that state schools provide. Although as a liberal I must tolerate freely chosen alternative or experimental lifestyles that are not harmful to others, equally as a liberal I must uphold parents’ right to reject those lifestyles as acceptable moral choices for their children.¹

The case for state intervention to lower the cost of exit assumes that the market forces and the information flow of open societies, coupled with strong enforcement of the basic negative rules of justice, are insufficient to lower these costs over time. This outcome, however, has not been the experience of recent history. The rise of fundamentalist hostility within Islamic communities in the West suggests frustration at their failure to achieve cultural insulation in open societies.

1. **Editor’s note:** For a carefully developed argument that the same moral considerations that lead us to condemn state interference in religion apply to state interference in education, see Otteson 2000.

The Problem of Externalities

A liberal society is not one of unbounded freedom, but one where individual autonomy is limited by the negative rules of justice. A society of unbounded freedom is a contradiction in terms because one person's unlimited freedom must come at the expense of another person's. The rules of justice, in the sense employed in this article, are fundamentally concerned with the externalities that result from the exercise of freedom by individuals. They enjoin individuals from conduct harmful to others and require wrongdoers to make reparation to the persons harmed. The rules of justice allow me to drive my car, but not in a manner that endangers others' lives. They grant me the power to make contracts, but they oblige me to perform them or pay damages for breach of their terms.

Sometimes, though, persons may cause harm to others by conduct that may not immediately be recognized as contrary to the fundamental rules of justice. Consider the case of a group that refuses on religious grounds to inoculate its members against a deadly communicable disease. The consequences may be catastrophic not only for that group, but also for members of the wider community who do not share that belief. It might seem at first flush that members of this group are merely exercising their freedom of conscience within the rules of just conduct. Yet from the standpoint of those who are stricken with the disease as a consequence of the group's behavior, it is a straightforward case of the violation of their rights not to be physically harmed by others' wilful or negligent conduct. Consider another case. If I am traumatized by witnessing cruelty to animals, and my neighbor engages in ritual animal sacrifices, we have a serious problem. If these sacrifices cause a general health hazard, the whole neighborhood has a problem. These are the types of externalities that invite state action and test the limits of toleration in a liberal society.

The common law as an evolving and adaptive system has shown remarkable capacity to internalize externalities by developing rules for apportioning responsibility for harm. The common law of nuisance, for example, seeks to uphold the principle of "give and take" and defines the obligations of neighborliness (Fleming 1992, 409). Animal sacrifices in my neighborhood may be judicially enjoined for causing private nuisance. Individuals who refuse immunization on grounds of conscience may face actions for damages if they contract and then communicate deadly disease. The common law by nature is not proactive but responds mainly to claims made after injury. However, where harm to person or property is imminent from trespass (intentional injury to person, land, or goods) or from nuisance, the courts have authority to restrain by injunction the harmful activity, especially when damages will not provide adequate reparation (Fleming 1992, 48, 445).

Admittedly, the law does not provide perfect protection. Injunctions can be sought only by those whose rights are under threat from unlawful action, and they are not always effective as remedies. It is easier to stop animal sacrifice in public than to compel parents to inoculate children. The liability rules and the remedies devel-

oped at common law and equity cannot prevent all externalities, nor should they if the society is to remain liberal. Liberals reject the goal of perfect safety and convenience as unachievable in the real world. The attempt to eliminate all pain must result in the infliction of pain. This insight is an important part of the epistemological case for liberalism.

Protection of Minorities within Minorities

A liberal society offers protection to all against harm to life, liberty, and property. Wrongs happen in liberal society, but they are not tolerated or condoned when they offend the principles of justice. Acts regarded as criminal or wrongful by the general society's law may sometimes be accepted or mandated practices within particular cultural communities. The practice of suttee (immolation of widows), genital mutilation of female children, honor killings, and denial of medical attention on religious grounds are examples. Should a liberal society tolerate these practices when they do not produce externalities?

Although a liberal society tolerates a great deal of cultural difference, other concerns arise when cultural groups engage in practices that violate the basic rules of justice that protect life, liberty, and property—acts such as murder, assault, rape, detention, theft, robbery, trespass, and related offenses. Enforcement of the basic rules of justice is indispensable if a liberal society is to uphold freedom of choice. These rules—the negative injunctions articulated in the law of tort and crime—should be applied in their full force. Thus, genital mutilation should be regarded as what it is—namely, grievous bodily harm to which no child or woman may consent. The basic rules of justice are also indispensable to toleration, freedom of conscience, and freedom of exit. Admittedly, serious procedural and evidentiary difficulties may arise in the investigation and prosecution of domestic crime within closed communities, but as Kukathas points out, often enough the members of the community themselves invoke the protection of the general law (2003, 144). They can do so because the courts and other institutions of justice apply the general law across all communities. Where person and property are secured, the institutions of freedom tend to win out in the intercourse of communities. Where they are not, oppressors win not just within minority groups but also in the society at large.

A liberal society can—and to remain liberal must—tolerate diversity. Equally, as a society in which the freedom of individual choice is paramount, it cannot tolerate denials, whether by the state or by groups, of the freedom of individuals to make their own life choices. This freedom is secured by the laws that protect personal safety and by Hume's "three fundamental laws concerning the stability of possession, translation by consent and the performance of promises." A society based on these laws is one that allows markets in goods, services, and information. A cultural community has a great deal of freedom within these rules to choose its own way of doing things. Its members may agree to share property and to live by their own religious codes. They

may choose to educate their children in special schools or at home. They may display symbols of their faith in dress and in other ways. They may preserve their language and their cultural heritage. However, they may not compel conformity in violation of the fundamental rules of the liberal society.

Cultural Preservation: The Politics of Multiculturalism

In democracies during the past two decades, minority cultural groups have made increasing demands for state recognition of their identities and for assistance in the preservation of their cultures. These groups have received strong intellectual support from left-leaning liberals. Governments in liberal democracies make substantial allocations to support the retention of minority religious practices, languages, arts, and crafts. In some countries, there is growing demand for state-provided schooling in minority languages and in minority faiths. Kymlicka (1995), who believes that individual freedom of choice is the fundamental principle of a liberal society, argues for state sponsorship of multiculturalism along these lines on the grounds that individual choices are shaped by culture. In the case of migrant minorities who have left their societal cultures to live in another culture, he argues that liberal society should grant what he calls polyethnic rights “intended to help ethnic groups and religious minorities express their cultural particularity and pride without hampering their success in the economic and political institutions of the dominant society” (1995, 31).

No doubt culture has much to do with individual choice. The choices in social life are shaped by both physical and social constraints. Unlike Robinson Crusoe on his lonely island, we find ourselves in society that both inhibits and empowers individuals. Kymlicka argues that a liberal society that values choice has a duty to assist minority groups to retain aspects of their culture. Although he is correct about the role of culture in shaping choices, he errs seriously when he infers that the liberal state therefore must preserve particular cultures so that the choices they generate are not extinguished. This argument rests on a misunderstanding of both culture and liberalism. Cultures, whether dominant or not in a particular geographical space, are forever in flux. They are dynamical systems that respond to information and stimuli. A culture that stands still in a changing world is a dead culture fit for museums. No one can predict with certainty how a culture will evolve. What is certain is that individuals’ adaptive behavior has much to do with cultural transformation. Cultures that appear to be stable are those set in stable environments. Communities that have been spared exposure to other cultures by natural or military barriers may retain ancient ways of life for thousands of years. Such stability, however, is the result not of choice, but of the lack of choice. In contrast, where choice is a feature of social life, individuals may embrace new ways of doing things.

State promotion of culture is necessarily redistributive and lies beyond the scope of the minimal state. Apart from this fundamental objection, two more problems can be found in the argument that if a culture is not preserved, individuals are deprived of choices it offers. The first is that the transformation of a culture may

actually increase choices available to individuals. The second is that the preservationist argument involves the assumption that the state knows what choices individuals may wish to preserve in a changing environment. Kymlicka's argument makes some sense from the communitarian and socialist viewpoints that subordinate individual choice to some notion of collective good. It makes no sense within a theory that gives primacy to individual choice. The retention and growth of culture will depend on free association and intercourse among individuals. Individuals who choose to live in liberal society must accept that their culture will be relentlessly exposed to the free flow of knowledge, ideas, and temptations because liberal society does not and cannot provide protection against exposure to ideas and information without sacrificing its principles. Such protection can be granted only by drastically limiting individuals' freedom, in particular their freedom of communication and association. A liberal society has no interest in destroying diversity, but also no interest in preserving it. As Kukathas rightly observes, the appropriate liberal attitude to the question of cultural preservation is one of benign neglect.

The ideal liberal society will not have a state religion even if all members confess to one faith because it must protect every member's freedom to embrace another faith. Liberal society does not punish apostasy or heresy. It is noteworthy that in liberal democracies with constitutional state-church links the trend has been toward greater toleration and state neutrality in matters of faith. Language raises more complex issues, but they too may be resolved straightforwardly. The language or languages in use in a liberal society will be determined by private convenience, not by state command. Because education is provided privately, the media of instruction will be determined privately. Linguistic groups that wish to maintain their languages may set up their own schools, but not with state aid. The minimal state will use such languages as are necessary for the effective performance of its functions. All of this will not prevent a particular language from becoming the *de facto* principal language through the weight of convenience. Nor will it prevent the emergence of second languages of preference. In this process of selection, some languages will have clear historical advantages, such as English in the predominantly Anglo-Saxon nations. In India, more than two hundred languages are in use, of which twenty-two are constitutionally designated as official languages. English is not so designated but has become the second-most-spoken language (after Hindi) and probably the most read and written language. It is by far the preferred medium of communication among different linguistic groups, and given its global reach and economic value, it is likely to become the dominant language in the country through free use.

Liberalism and National Minorities

Nearly every country has ethnic, religious, or linguistic minorities. Countries such as India and Sri Lanka have different religious and ethnic communities whose members are natives of the land. Some of these communities form nations identified

with traditional homelands. Countries such as Australia, New Zealand, the United Kingdom, the United States, Canada, and France have both national minorities and recent immigrants from different societal cultures. Kymlicka argues that in the case of national minorities, such as the American Indian tribes, liberalism requires devolution of power “to a political unit substantially controlled by the members of the national minority, and substantially corresponding to their historical homeland” (1995, 30).

Liberal society is not an imperial society in the conventional sense, although it may be one in the cultural sense. Hence, it has no evangelical mission to liberalize illiberal societies that do not pose any threats to it or to keep within it individuals who wish to quit it. In principle, within liberal society, a group whose members decide by consensus to secede and live under different rules should be able to do so, provided that a fair settlement is reached concerning borders and that the rights of persons affected are not violated.

National minorities are usually the result of nations and their territories being conquered by or ceded to other nations. The longer these nations are integrated politically and economically with other nations, the more complex the solution becomes. Many difficult questions arise in reaching a settlement on devolution of political authority to national minorities. The liberal approach to these questions will accord primacy to the principle of choice.

Where national minorities have been politically and economically integrated for long periods, it may not be possible to achieve separation without damaging the society’s liberal character unless the seceding nation is also liberal in its culture and institutions. Members of the minority and majority communities may have intermingled geographically and culturally under a liberal regime to the extent that a liberal society may not be able to meet separatists’ historical claims without violating its fundamental commitment to individual autonomy. Individuals who do not wish to leave the liberal society may find themselves within the jurisdiction of the separating entity. In such cases, the terms of separation may have to include adequate compensation to those individuals to enable them to relocate to the liberal society. Where separation is feasible, all parties may consider a number of different models of devolution, ranging from federal arrangements to complete independence. Federal arrangements are useful options not only because they can satisfy the concerns of nations regarding territorial integrity and national security, but also because they enhance individuals’ freedom of choice by allowing them free movement and domicile within and among jurisdictions of their choice. The free trade and intercourse that are features of functioning federations have proved better in maintaining liberal society than enforced unity.

Hard Borders, Soft Borders, or No Borders?

Territoriality and State Borders

Migration, settlement, and colonization figure prominently in the natural history of the human race. Some communities, such as those linked by faith or language, may

stretch across territorial, national, and ethnic divisions. All the same, as a general feature, human communities from the earliest tribes to the modern nation-states have tended to be territorial. In the natural order of things, unoccupied lands are susceptible to possession and ownership by successful occupiers. Successful occupation depends on many factors, including the location of the land and possible resistance by neighbors. However, the world today—even its uninhabited parts, such as the Antarctic continent—is territorially divided among states (see Article IV of the Antarctic Treaty). Even large parts of the sea are allocated to littoral states by the creation of exclusive economic zones under the international law of the sea. The nation-state has successfully established control over all unowned real property on the basis of state sovereignty and over even owned real property by right of eminent domain. So migration by occupation is not possible without confronting the force of the state. In nation-states, legal immigration is at the state's discretion.

Borders range from the hard external borders of nation-states to the ultrasoft borders that separate states within federations. Borders become soft to the extent that aliens are granted the liberty of entry. The internal borders of the United States are ultrasoft because they permit U.S. nationals and residents to migrate freely from state to state with minimal legal constraints. European Union (EU) nations have soft borders in respect of EU citizens, who have the liberty to seek employment and to reside within any of the member countries. This is not an unlimited freedom because migrants must meet local occupational licensing requirements and clear welfare eligibility hurdles. States typically discriminate in selecting who may enter and on what terms they enter. As an Australian national, I have greater license to visit the United Kingdom and the United States than do the nationals of many other countries. Most liberal democratic states have facially nondiscriminatory immigration laws, but those laws affect persons differently, depending on factors such as skills, capital, language proficiency, and family connections. Many countries admit political refugees and asylum seekers either by independent choice or by obligations undertaken under international conventions.

What is the liberal attitude toward immigration? A useful way to arrive at an answer is by examining first the anarchist libertarian's stateless society, then a society subject to the minimal state, and finally the sort of society currently found under liberal democratic systems.

In the libertarian anarchy, every asset—including roads, rivers, forests, and coast—is privately owned (Block 1998, 173; Hoppe 2002, 77). There is no state, hence no state land and no state welfare. An alien cannot legally enter any part of the territory under these conditions without the relevant property owners' agreement. In other words, an alien does not have the "right" to immigrate to the territory. However, in a free society of property owners, each owner must presumptively have the liberty to invite aliens onto his property. A member may wish to invite an alien for economic reasons—to secure labor, capital, or know-how unavailable within the society. Or a member may invite an alien for sentimental reasons, as in the case of family reunion, or for compassionate reasons, as in the case of asylum seekers. Block

and Hoppe predict that no mass immigration will occur in such a society. Successful immigration will depend on the immigrant's securing employment, housing, school admission, and other necessities of life through contract or private charity. Under an agreement among property owners, the inviting property owner may not have the right to invite a stranger onto his property without other property owners' consent. What happens typically in private clubs will in theory happen in a small anarchical libertarian society.

Consider now a hypothetical minimal state, constitutionally limited to the protection of person and property and the enforcement of contracts. It owns no property except what is needed for the machinery of law enforcement. It has no power to tax but receives only fees for its service. It has no power to transfer wealth from one person to another. The migration policy under such a regime will be exactly the same as in the natural order. An alien may enter on the invitation of a property owner (and possibly with the consent of other property owners) and will be able to remain only by receiving private charity or by purchasing the necessities of life with the wealth he brings or the income he earns by trade or occupation. Under such a regime of personal responsibility, if an immigrant causes damage to another person and has no assets to compensate the loss, the inviting member may be liable for the compensation. This rule may result from contract among members. Alternatively, it will be derived from the general principles of vicarious liability for wrongful damage. Mass migration under these conditions is difficult to imagine.

Conditions in the real world of the modern state differ enormously. The state is not limited to the protection of citizens' rights. It can tax, spend, and transfer wealth in innumerable ways. It holds all land that is not privately owned. Every piece of privately owned land is susceptible to its eminent-domain claims. It owns schools and universities that may admit foreign students. It controls the territory in a more profound way. No alien may enter without its consent, and it may admit anyone at its pleasure. It can settle immigrants and sustain them with wealth expropriated from citizens. Liberals have no reason to accept these conditions even though the prospects of the state's retreating to its minimal functions are remote in the short term. The case for winding back the state must be made consistently, and a critical reexamination of the state's role in relation to human migration must form part of this effort.

A society that gives preeminence to freedom of choice will accept neither forced integration nor forced exclusion. The principle of nonintegration means that no person is compelled to admit another person onto his property or to provide charity. It also means that the state must not transfer wealth, including state lands, to facilitate immigration. The principle of nonexclusion means that no person is prevented from admitting an alien to his property or from dealing with an alien, except on a legitimate ground, such as security or health hazard. The state's role would be to maintain these conditions so that immigration takes place as an exercise of choice by the members of society and their invitees. Walter Block's view of the libertarian position on immigration is essentially the same. He argues that "the totally free movement of

goods, factors of production, money, and, most important of all, people, is part and parcel of this traditional libertarian philosophy... . Like tariffs and exchange controls, migration controls of whatever type are egregious violations of laissez faire capitalism” (1998, 167–68). However, implementation of this philosophy results not in open borders, but in clear borders that preserve the order under which the freedom of choice is maintained.

It is worth considering the common fears of such a liberal approach to immigration. One fear is that it will lead to the importation of cheap labor that will throw locals out of work or depress their wages. In regulated markets, minimum-wage legislation is used as a means of preventing entry. Where wages are unregulated, immigrant workers’ entry will result in downward pressure on wages. Importation of cheaper foreign goods produced in low-wage countries and the emigration of industries to such countries have a similar effect, though not so directly. If it is acceptable to import goods, then why not labor? Here we encounter the next concern, which is cultural: people have a greater impact on culture than goods do. We notice that immigration from societies that are culturally similar causes less concern than immigration from culturally dissimilar societies. In economic terms, such concerns arise from the intuitive assessment of transaction costs. People have more trust when they deal with like people. At another level, some natives fear that immigrants inexperienced in the liberal way of life may weaken liberal institutions. Mass migration across open borders will almost certainly threaten these institutions, but, as speculated earlier, such mass migration is unlikely in a regime of comprehensive private rights.

The twentieth century provides two interesting historical laboratory tests of the impact of culture on liberal institutions and vice versa. The first concerns the so-called White Australia policy. For more than one hundred years, the state excluded non-white races from the continent, often leading to curious results. The state spurned Indian physicians and mathematicians and Chinese industrialists while welcoming welfare-dependent white immigrants. Governments justified the policy on cultural grounds, but it was supported most assiduously by the labor unions that feared cheap labor. The policy was officially abandoned in 1973. Since then, Australia has admitted immigrants from all parts of the world. The last census, taken in 2001, showed that 6.3 percent of Australian residents were born in Asia (Pakistan to Japan), the Middle East, and Africa. This percentage represents a significant injection of alien culture. Yet there is no evidence of the feared social disruption. Australia’s record in constitutional government, economic performance, and social harmony remains among the best. It is unwise to draw conclusions from one case study, of course, but the histories of other successful democracies do not falsify this hypothesis. The “Great Disruption” in the West evidenced by increasing crime, family breakdown, and dependence (Fukuyama 2000) is more the outcome of misguided welfare policies, the dilution of individual responsibility, and weakened law enforcement (Ratnapala 2003, 17–20). All of this does not mean that immigration from nonliberal cultures in proportions larger than hitherto experienced by Western democratic states will not have a serious

impact on liberal institutions through cultural dilution. My point is that migration on a scale that threatens liberal institutions is unlikely to occur under a liberal regime of migration by consent.

The twentieth century also showed that when people have political choice, they tend to choose the liberal way irrespective of their ethnic, linguistic, or religious conditioning. The Hindus and Muslims of India; the Buddhists of Japan, South Korea, Thailand, and Taiwan; the Muslims of Malaysia and Indonesia; and the Confucians of Hong Kong and Singapore have shown that they will embrace liberalism successfully when given the chance. None of these countries is ideally liberal, but all have progressed against severe odds from various forms of authoritarianism and collectivism to liberal political and economic orders. This fact must call into serious question the cultural arguments against the position taken in this article. I am not suggesting that liberal societies have no cultural enemies. The enemies are not all militant Islamists, either, although at present Islamist terrorism presents the most visible and immediate threat. Wherever a culture is threatened by the freedom of choice, we must expect the resistance of minorities whose members believe uncompromisingly that the endangered culture is worth preserving by force. Liberal society, being one of choice and trading, threatens some cultures by its very existence, so it will always have culturally motivated enemies.

Many migrants, once they arrive (some even before they arrive), are seduced by the welfare state and blend easily into the culture of dependence, special pleading, and distributional politics. In this respect, they are hardly indistinguishable from a large segment of the local population. On the positive side, immigrants from societies unspoiled by state welfare tend to bring with them strong family values and work ethics that help replenish the moral and social capital seriously depleted in welfare-dependent Western societies. Immigrants who are bearers of capital or skills are more likely than not to strengthen the economic and institutional foundations of liberal society, and in the slightly longer term so would the immigrants who arrived as dependents of culturally assimilated members of liberal society rather than as dependents of the state.

Involuntary Migration: The Case of Refugees

Victims of natural calamities and human persecution sometimes have no choice but to flee their homelands for survival. Most countries (but not the United States) have undertaken obligations to accept refugees through accession to the Convention Relating to the Status of Refugees (1951) and the Protocol Relating to the Status of Refugees (1967). Chapter 4 of the convention imposes on contracting states obligations to provide refugees specified welfare, including elementary education, public relief, and social security. Although the United States is not a party to the convention, it is one of the great asylums for refugees. The convention and protocol do not apply to victims of natural disasters, but many liberal democracies have humanitarian programs to admit such persons at the state's discretion. There is no reason to think that the

kind of liberal society I have described would be less humane toward victims of persecution or catastrophe. An inarticulate assumption resides in the arguments of those who mistrust liberty that freedom of choice makes people self-centered and incapable of compassion, but no scientific or historical evidence suggests that freedom changes human nature. On the contrary, charity is an individual virtue, and freedom of choice is a necessary condition for its expression. It stands to reason that where the state is the great provider with expropriated wealth, the capacity and incentives for private charity are diminished. In a liberal society where the people are not so dependent, we may expect more private responses to the needs of fellow beings (Higgs 2004, 24–25). My experience in living the greater part of my life in a poor country with minimal social security leads me to theorize that the provision of private charity in a society is inversely proportional to the provision of state welfare.

However, state asylum and private asylum will differ substantially. A liberal society that gives preeminence to choice will allow its members to invite people into the society, provided that the inviting members bear the cost of the entrants' maintenance and indemnify other members against harm to their rights that the invitees may cause. Under a liberal regime, no distinction will be made between "political" refugees and "economic" refugees. The so-called economic refugees are almost always the victims of bad economic policy. International and domestic law is biased toward persons who suffer harm as a consequence of birth, belief, or practice, as opposed to those who suffer and even die because of the general failures of command economies. The liberal position defended here does not distinguish between the causes of suffering. It does not matter whether a person is imperiled by state brutality, state incompetence, or natural disaster. The decision to help rests properly with individuals, not with governments or United Nations agencies. The liberal position is thus more humane than the statist philosophy that currently ordains the international law relating to asylum.

Pro-refugee activists and organizations should welcome the liberal position because it allows them to take direct action. They and other associations currently providing private humanitarian assistance worldwide will have the power to sponsor people to their own countries by bearing the cost of entry, settlement, and social security and by indemnifying fellow citizens against harm. A liberal policy will not stand in the way of anyone's support of private refugee programs. The difference is that such programs will be funded not by state taxation, as they are at present, but by private donations. Refugee advocacy under current statist conditions amounts to the demand that all members of society be compelled to support refugee settlement through public finance. This policy is yet another case of taking property from some to fund the choices of others. It is always more difficult to be generous with one's own wealth than with others' wealth.

I have not argued here for a borderless society or even for soft borders. Borders in the kind of liberal society envisaged here are effective borders that preserve property rights and freedom of choice. They are in this sense private borders. The state's role is to act as the people's gatekeeper.

Conclusion

Cultural diversity is unavoidable in the extended society. I have sought to derive from an ideal type of a liberal society the rational responses to four issues that arise from cultural diversity—namely, illiberal cultural practice and claims for cultural preservation, self-determination, and immigration. A liberal society that holds freedom of choice to be preeminent must accept diversity to the extent that is consistent with that freedom. Accepting diversity means conceding to others their freedom of choice as to how they live. Freedom of choice, however, is limited by others' rights. Freedom is enhanced by subjecting all choice to the fundamental laws concerning the protection of life, liberty, and property. Hence, a liberal society does not tolerate all forms of culture or all aspects of individual cultures, but only those that respect its fundamental laws. In liberal society, the fundamental laws apply to all individuals and above all to the state. State suppression of particular culture is a denial of choice and directly violates the fundamental laws. State promotion of particular cultures involves redistributions that conflict with these laws and hence must be equally condemned. The liberal society envisaged here is not a borderless society. It has clear borders across which individual members may invite aliens subject to the rights of others. The fears that such borders will result in culturally and economically unsustainable levels of migration that will erode the institutional foundations of liberal society are understandable but unrealistic within this model.

The ideal liberal society assumed in this discussion does not exist and will never exist. It is nevertheless a source of inspiration and of principles for those who wish to defend and extend liberty in the imperfectly liberal societies in which they find themselves.

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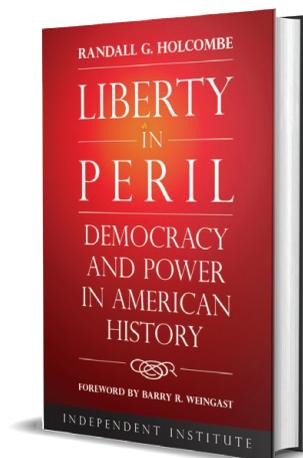
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