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**The Adjudication of Ethnic Claims**

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## Abstract

Multiculturalism is, among other things, a normative framework for addressing claims made by ethnic political actors in liberal democratic states. It offers principles for deciding which of these claims are acceptable, which unacceptable, and which imperative on grounds of justice. The practical application of such principles to particular cases is what is called here adjudication, whether or not it has a judicial character. The argument of the paper is that a tendency to frame adjudication solely in normative terms, with reference to idealised ethnic claims and idealised political processes, has led many contributors to multicultural literature, including some of the most influential, to misstate the problems, and therefore to offer solutions of dubious relevance. The reason for the normative focus is, understandably enough, to avoid conflating justice with a balance of interests in pluralist bargaining. What is lost by such an approach, however, is the thickness of the political sociology of ethnic claims, which goes hand in hand with the institutional thickness of their adjudication. A crucial aspect of this is the sociologically inadequate conception of culture characteristic of normative multiculturalism, as a result of which it is often difficult to apply empirically to the very contexts multicultural theorists are mainly concerned with. The attempt to find substantive principles for the adjudication of ethnic claims that might be independent from practical politics, including empirical power relations, is ultimately unsuccessful.

## Résumé

Le multiculturalisme offre un cadre normatif pour la gestion des revendications politiques exprimées par des acteurs politiques ethniques dans les démocraties libérales. Il propose, spécifiquement, des principes permettant de déterminer quelles revendications sont inacceptables, lesquelles sont acceptables, et lesquelles ont, au titre de la justice, un caractère impératif. C'est l'application pratique de tels principes à des cas particuliers qui est appelée ici adjudication, qu'elle ait ou non un caractère strictement judiciaire. L'article défend l'idée que, pour avoir envisagé l'adjudication dans une perspective exclusivement normative, nombre de contributeurs à la réflexion multiculturaliste, y compris certains des plus influents, ont mal situé le problème, et donc proposé des solutions de pertinence discutable. Cet accent normatif résulte du souci compréhensible d'éviter que la justice se confonde avec l'équilibre des intérêts dans un processus pluraliste de marchandage. On y perd toutefois l'épaisseur de la sociologie politique des revendications ethniques, elle-même étroitement liée à l'épaisseur institutionnelle de leur adjudication. Une dimension essentielle de cette perte est la conception sociologiquement insatisfaisante de la culture qui est caractéristique du multiculturalisme normatif, et qui en rend l'application malaisée précisément dans les contextes mêmes dont les théoriciens multiculturalistes se préoccupent. La recherche de principes d'adjudication des revendications ethniques qui ne soient ni purement formels ni assujettis aux dynamiques politiques pratiques, y compris les rapports de forces empiriques, se révèle en fin de compte infructueuse.

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In the roughly democratic contemporary constitutional state, equity – or fairness, or justice – is the very stuff of politics. The reasons for issues to emerge on the political stage may vary widely, and political actors may certainly be motivated by considerations other than a sense of justice – even when struggling against what impartial observers might judge to be demonstrable injustice. Under the pressure of mobilisation aimed at using it without contributing to its maintenance, the constitutional order may indeed collapse completely. However, so long as it survives – which may mean simply that no group powerful enough to destroy it perceives an interest in doing so –, it structures the whole political arena. What a constitution offers is a fairly stable and predictable framework for political adjudication. This comprises an accepted language for formulating political claims, a set of procedures for assessing them, and a series of possible institutionally coherent responses to them, covering the range of ‘policy’ from constitutional amendment down to administrative implementation of existing programmes.

‘Adjudication’ in this sense is of central importance in recent political theory, notably in the highly influential work of John Rawls and Jürgen Habermas. It often tends, however, to take on specific judicial connotations. No one would deny that the United States Supreme Court or the German *Bundesverfassungsgericht* are politically important adjudicative institutions, but it is not my intention here to adopt the Rawlsian view that supreme courts have a peculiar, privileged status with regard to the ‘public use of reason’. Adjudication is performed routinely, by a wide range of judicial and non-judicial officials, because it is embedded in the very structures of the constitutional state. On every occasion when someone, even an isolated individual, claims something on the basis of entitlement – unemployment benefit, say, to take a deliberately quotidian example –, officials at various levels are called upon to apply the letter of the law with due regard to its spirit. They may do so badly; and they may, quite consciously, refuse to do so at all. But the constitutional state creates a complex web of expectations and perceived obligations that normalises most behaviour most of the time, and explicit procedures of judicial review and informal opportunities for protest rectify at least some of the remainder. Furthermore, procedures that fit poorly within the framework of ‘application of the law’ also have an adjudicative character. Thus government policy based on explicit legislative authority is subject to similar constraints, though bargaining, of course, assumes greater importance here than at the level of routine administration.

What this means is that adjudication is an inseparably empirical and normative issue. It involves norms embedded in practices by the belief of actors that they are valid and by the

implicit logic of the practices themselves. While the theorist may reflect on them, therefore, the empirical existence of these normative structures does not depend on such reflection. Furthermore, precisely because of their embeddedness, normative structures of this kind are not simply discursive. The existence of general norms and established procedures influences the language in which political claims are formulated and the ways in which they are propounded; however cynical lip-service to them may be, it nonetheless has real observable effects. Similarly, however insincere the consideration given to claims regarded as eccentric, irrelevant or threatening to the established order, the obligation to deal with them in a certain way has practical consequences. In the democratic constitutional state, equity is empirically paramount – with respect to issues of ‘entry’ as to issues of ‘exit’, and indeed to issues that do not fit neatly into either category. The theorist may challenge the coherence or the universalisability of empirically embedded norms – but this is a different issue.

The interest in adjudication is hardly controversial – or even original. It is, in particular, taken for granted in the vast normative literature that has emerged in the past two decades or so on the problem of ‘multicultural justice’. I wish to argue here, however, that a tendency to frame adjudication *solely* in normative terms, with reference to idealised ethnic claims and idealised political processes, has led many contributors to the debate, including some of the most influential, to misstate the problems, and therefore to offer solutions of dubious relevance.

To say that ethnic claims and institutional responses to them are, in the democratic constitutional state, necessarily framed by considerations of equity is not to say that they are reducible to such considerations. Indeed, equity is a resource (albeit, perhaps, a resource for the comparatively powerless): it is an expression of, rather than a constraint upon, strategic rationality. Furthermore, what ‘equity’ means in this context refers to established institutions rather than to abstract standards of justice. It generally works within, and is subject to the limitations of, interpretative critique in the Walzerian sense (Walzer, 1987, 1988; and on the limitations Barry, 1991a). Finally, because ‘equity’ is a language in which claims are stated rather than a claim in its own right, it emerges in the context of a wide range of local, circumstantial issues that are as diverse as the empirical actors that care about them.

By contrast, most current normative approaches seek to elaborate criteria for adjudication based on considerations of justice *external* to the claims themselves. The intent is to avoid a very real problem: that considering only actual claims at face value, especially

when perceptions about justice differ sharply, in effect reduces multicultural justice to a balance of power. After all, the whole point of a theory of justice is to incorporate an account of claims that would be valid but are not actually made, because their potential beneficiaries lack the resources to promote them – and perhaps even the awareness to formulate them. The weak, quite reasonably, are presumed to have *stronger* claims on justice than the powerful (Kymlicka, 1995b). At the same time, however, it is taken for granted, for the purposes of thinking about *multicultural* justice, that many concrete claims made by actual groups are in fact justified. This is perfectly defensible in principle, but it does create some real difficulties, which lie somewhere in the grey zone between normative political theory and empirical political sociology. The easiest way to derive criteria for adjudication is to refer to *normalized generic claims*. Thus, Kymlicka can distinguish between ‘national minorities’ and ‘ethnic groups’ on the basis that ‘most polyethnic demands are evidence that members of minority groups want to participate within the mainstream of society’ (1995a, p. 177) – a generic entry claim deriving from considerations of equity. This is clearly an empirical statement – it would be contradicted by, say, evidence from other sources that the relevant people actually want something quite different. But, at the same time, it is assumed to have normative significance: such demands are reasonable because of their motivation; and conversely other kinds of demands, with a different intent, might not be so reasonable. The trouble with ‘generic actors’, however, is that one is never entirely sure whether one is talking about actors (groups, or rather individuals claiming to represent groups) or about statistical categories – and of course people claiming ‘representativity’ themselves have an interest in muddying the waters. What is lost by such an approach, in other words, is the ‘thickness’ of the *political sociology* of ethnic claims, which goes hand in hand with the institutional thickness of their adjudication.

In order to try to clarify these issues in ways that respond to the requirements of both political theory and political sociology, I propose first to offer a more precise characterization of ‘ethnic claims’ than that usually assumed in the literature. The second section analyses the basis on which multiculturalism, appropriately defined, might offer a distinctive set of answers to the problems of adjudicating ethnic claims. Since I suggest that this basis is necessarily the definition of social groups primarily by reference to ‘cultures’, the third section focuses on group formation and offers an argument that the idea of a cultural group, while perfectly coherent in principle, has little empirical application in the contexts multicultural theorists are mainly concerned with. I conclude in the final section that the attempt to find substantive principles for the adjudication of ethnic claims that do not depend crucially on practical politics, including empirical power relations, is ultimately unsuccessful.

## THE NATURE OF ETHNIC CLAIMS

The standard paradigm of the 'politics of identity' is familiar (Calhoun, 1994). A wide range of writers from several disciplines and with a variety of perspectives have judged that a series of shifts, both in social structures and perceptions, have enabled previously repressed forms of consciousness to become self-aware, while simultaneously undermining established beliefs in the backwardness of religious, cultural, ethnic, regional, etc., identifications and the self-evident superiority – and therefore historical dominance – of, depending on one's political allegiance, either liberal individualism or class struggle. Starting from such an assumption, there are several possible directions. One might study the modes of the newly affirmed identities, the practices and discourses that express them, whether explicitly in self-conscious mobilization or implicitly in the general process of social participation. Another might consider the basis for the historical neglect of identity questions and study, particularly, the ideological elisions and erasures that lead a certain view of 'backwardness' to be taken for granted – and therefore the decline of identity politics to be more or less coterminous with 'modernity'. Both have generated a large, complex and in many ways problematic literature, but they will not be my concern here. What I wish to discuss is the equally extensive literature that has sought to provide a coherent normative basis for the kind of claims raised by, or in the course of, identity politics. Many of these claims are routinely dismissed as irrelevant, unreasonable, unacceptable or frankly dangerous by those to whom they are addressed, and are therefore presumptively in an institutional position to respond to them, and, in some ways more importantly, by those who regard themselves as guardians of the public faith – especially when that faith is liberal, secular and modernist. In order to counter such dismissals (assuming one wishes to), it is necessary to offer competing normative arguments for the admissibility, urgency or even imperativeness of habitually disregarded claims. In a symmetrical way, this may be done by those who promote the claim itself, but is often more significantly the work of those who aspire to be both critics of the established public faith and guardians of a rival to it – a rival, indeed, that is increasingly a central component of international common sense, and institutionalised as such (Kymlicka, 1995b; Packer, 1996; Schulte-Tenckhoff, 1997).

Such a rival faith bears many names, which sometimes reflect arbitrary differences in vocabulary, or the difficulties of translation, and sometimes real conceptual distinctions. The detail is not really important for my purposes here. Suffice it to say that 'pluralism' and 'multiculturalism', with various adjectives and nuances, cover most of the ground that I shall focus on here. I shall postulate, at least in a minimal sense, the basic validity of their critical thrust: much unacknowledged bias creeps in under cover of 'neutrality' and 'universality'; much supposedly impartial concern for public order and individual liberty is tangled up with racist or quasi-racist 'common sense'; much that is historically established has no real justification in principle. However, I am interested here in going beyond such negative criticism, and considering arguments for regarding some alternative set of institutional and conceptual arrangements as more justifiable. On this count, the pluralist–multiculturalist position appears less convincing. In effect, its attempt to combine the philosophical and sociological dimensions of identity as though they were unproblematically coterminous leads it either to unwarranted assumptions about the nature of actors' motivations and social processes, or to political vacuousness. I shall conclude with some remarks about the kind of normative approach necessary to avoid such difficulties.

Within any broadly multicultural perspective, the issue is to identify forms of social and political inequality that relate to – and may even be directly caused by – the failure to take due account, or to admit the legitimacy, of cultural diversity (Goldberg, 1994). However the fairly unproblematic assumption that the kind of 'monoculturalism' (curiously, a word rarely used) that multiculturalism is designed to counter is a real phenomenon – and one that is, in general, normatively indefensible – does not in itself offer a *positive* normative framework. In order to produce such a framework, two approaches might be imagined. The first would start from the actual claims that, by challenging 'monoculturalism', or existing institutional forms that, while not strictly monocultural, inadequately recognize cultural diversity, promote the multicultural agenda in practice. This raises two difficulties. On the one hand, it may neglect the problems of ideology or hegemony and confuse the empirical stability of a system with its normative justification. The mere fact that no cultural pressure groups are currently challenging an established order hardly suffices to let it off the hook. Conversely, however, not all challenges necessarily raise issues of normative justification. Claims made by identifiable groups may well be unreasonable, absurd, exploitative, and indeed genocidal: examples are depressingly familiar. To treat the capacity of a pressure group to mobilize as justification for taking it seriously leads to the kind of traditional interest-group liberalism that multiculturalism – in line with Rawlsian and post-Rawlsian theory generally – is concerned to debunk. As Kymlicka puts it, referring to the return to

prominence of minority rights in international relations, 'these declarations (...) are quite vague, and often seem motivated more by the need to appease belligerent minorities than by any clear sense of what justice requires.' (1995a, pp. 5-6). And, in fact, all multicultural theorists make distinctions between claims that are or could be advanced in terms of their legitimacy and urgency. The second possible approach, therefore, is objectivistic, at least in the sense that it seeks standards that can be applied without reference to the contingent balance of power. It thus offers a framework for the adjudication of actual claims, either by concrete institutions with responsibility for so doing, or in conscience, and the evaluation of potential claims. Whether it need be objectivistic in the stronger sense that it functions without reference to the beliefs, motivations and intentions of those advancing claims, or in whose name claims could in principle be advanced, will require further discussion.

This may seem rather abstract, but we are in fact on very familiar territory here. Take for instance the extensively discussed question of school uniforms as they apply to pupils who, for whatever reason, claim exemption from them, or whose parents claim exemption on their behalf. It would be hard to find in the multicultural literature any argument that what, say, any particular schoolgirl wishes to wear is conclusive as to whether she should be allowed to wear it. Furthermore, no strong normative significance is usually judged to be attached to what schoolgirls generally wish to do or to avoid doing. If anything, multiculturalism seems *less* sensitive to educational libertarianism, to child-centred education, or to the consumer culture, than public debate as a whole. The decisive criteria in terms of legitimacy, therefore, are usually either the *reasons for*, or the *context of*, the claim. To focus on a schoolgirl's reasons for refusing some aspect of the uniform, or her parents' reasons for demanding that she be exempted, is weakly objectivistic: it must, on pain of vacuousness, define some reasons as 'inadequate'; but does not offer a criterion that can be applied in the absence of concrete discussion with the claimant. An example might be the sincere belief that what is being claimed is a religious or cultural requirement. (In effect, this is what the French authorities now use in the compromise solution reached over the 'headscarves' issue – combined however with an additional reason-based criterion, which is explicitly a condition for toleration, viz. the absence of any *political* motivation.) The two obvious difficulties with such an approach are, firstly, the difficulty of applying it (someone's true reasons for action can never in principle be perfectly known); and secondly the paradoxical implication that the people least equipped, in terms of 'cultural capital', to provide justifications – who might on average be expected to have stronger claims on social justice – will be dismissed when they offer bad reasons for demands for which good reasons are in fact available.



This may suggest that the *availability* of good reasons, which may be different from those actually offered by the actor, is in itself an adequate criterion for adjudication. Certainly the framing of ethnic claims in legal language, as performed by professional intermediaries such as lawyers, often approximates in practice to such a criterion. Two difficulties, however, remain. First of all, there is no basis for assuming consensus on what counts as a 'good reason' (Barry, 1991b). In its absence, there is simply no way to extract considerations of equity from the political dynamics of claim and counter-claim. Secondly, and in some ways more importantly, reformatting claims is not politically neutral, and may be incompatible with what one might call the 'meta-discourse' of identity claims: the demand for respect or recognition (Taylor, 1994; for a critical discussion, see Crowley, 1998).

To this extent, the reasons for claims – whether those actually advanced or those that could have been advanced – do not offer an adequate criterion for adjudication. They are therefore almost invariably supplemented, or replaced, by criteria that refer to the objective context. These fall into two categories. Firstly, criteria may relate reasons to their cultural background, for instance by evaluating the authenticity of a claim rather than its sincerity – not whether the claimant genuinely believes that something is an obligation, but whether such a belief is generally accepted and officially sanctioned (by scripture, ecclesiastical authority, or sociological, anthropological or historical expertise). The point is not of course that the claim is not sincere – simply that its sincerity is not relevant to its acceptability. Thus, in the classic *Mandla* case, the British House of Lords was called upon to decide whether Sikhs counted as an 'ethnic group' for the purposes of the 1976 Race Relations Act, and what obligations are objectively incumbent upon Sikhs. Following this line of argument, it would be possible in principle to argue that a sincere claim is to be rejected on the grounds that it is misguided, an approach often adopted in discussions of female circumcision, which is widely, but incorrectly, believed in sub-Saharan Africa to be a requirement of Islam. Similarly, many French participants in the 'headscarves' debate claimed (with some justification) that neither the *Qu'ran* nor North African custom require the kind of head-dress (the *hijab*, covering the whole head and neck except the face, rather than simply the hair) that was at issue, nor perhaps any cover at all in a closed space such as a classroom. Whether this is correct is not the point: I wish simply to stress that any criterion of the 'authenticity' kind necessarily raises such debates and requires that – at least in practical, institutional and provisional terms – they should be solved.

Secondly, a criterion may evaluate claims by the effects of meeting or rejecting them rather than by their reasons. This is obviously strongly objectivistic in so far as the wishes of

the claimant have no privileged argumentative status (Galenkamp, 1996). There is nothing incoherent in denying that people are always the best judges of their own interests – although it would be hard for any democrat to argue that they *never* are. Indeed, the main advantage of an objective approach is that it allows one to evaluate claims that are not directly made, either because they cannot be made (e.g. the rights, if any, that should be granted to animals, unborn children or people in presumptively irreversible coma) or because the socio-political system blocks their expression (Føllesdal, 1996). The effects, in turn, may be analyzed in various ways, not necessarily restricted to the interests of the claimants themselves. One perspective might be the relation between (the lack of) cultural rights and socio-economic inequalities; another the identity consequences of misrecognition or lack of respect. Such an objective form of consequentialism tends, however, like criteria based on ‘good reasons’, to conflict with the principle of respect or recognition even as it enshrines it. There are thus strong internal reasons for ‘authenticity’, at least in a broad sense, to play a central role in multicultural theory.

The point of this over-simplified typology is to point to a series of issues that have to be addressed in order for any serious consideration of ‘ethnic’ claims to be possible. (I take ‘ethnicity’ for these purposes, on broadly Weberian lines, to be anything framed in cultural terms that postulates the ‘naturalness’, or at least the ‘inheritability’, of culture). What is crucial is that the problems of cultural diversity are not raised in an abstract normative space. Indeed, in a very real sense they are not ‘raised’ politically, but rather emerge from practical politics at any point where the taken-for-granted dimensions of ‘culture’ – or what is regarded, perhaps misleadingly, as being cultural – are challenged. Of course, theoretical discourses about, say, multiculturalism are not entirely separate from the political issues that they are concerned with. In principle, they can always be appropriated by social actors, and in practice often are, at least in simplified form. Furthermore they may be explicitly intended as contributions to political debate. But, precisely to this extent, the theories do not exist in an abstract theoretical space either. Any normative approach to the adjudication of ethnic claims involves sociological judgements about the motivations of social actors, the nature of their identities and interests, and the relation between the two; and the relevance of the normative theory depends to a very significant extent on the plausibility of its underlying empirical framework. Conversely, a normative approach can escape dependence on empirical sociology only if it is prepared to abandon any claim to offer a practical framework for adjudication.

Multiculturalism, in all its numerous variants, presents itself as such a normative theory sensitive to the concrete conditions of its implementation. Its core is the claim that mainstream liberalism, whether in its pluralist, interest-group, or philosophical guises, regards cultural issues as identical in structure and meaning to other (particularly socio-economic) issues, and therefore similar institutional and normative principles as applicable to all political issues. In effect, this kind of liberalism at least is judged to analyse culture as just another kind of interest, which can be bargained about in ways that are, normatively, perfectly defensible so long as they are framed by a competitive market for ideas and political resources. This, all multiculturalists would argue, albeit in rather different ways, misstates the nature of identity and culture in ways that are objectionable in principle and have serious consequences in practice. Properly understood, 'culture' is not something one can 'bargain' about, but rather the language within which bargaining, or any other form of deliberation or argument, can take place. To presume otherwise is not just theoretically misleading, but likely to prove practically inoperative. The challenge, therefore, is to elaborate forms of adjudication that do not require one to deny culture in order to deal with it.

So far, so good – but what are the actual consequences of such a multicultural perspective? Does it make a tangible difference, and if so in which respect? Are there plausible claims, with some practical importance, that multiculturalism would regard, for good reasons, as justified, whereas liberalism would reject them; or, conversely, claims that liberalism would allow but that multiculturalism would convincingly insist on dismissing? This way of stating the question may seem strange. Both liberals and multiculturalists seem generally to believe that there is a clear divide between them. On the other hand, it is striking that many of the leading proponents of multiculturalism as just defined – pre-eminently Charles Taylor and Will Kymlicka – reject the sharpness of the division and call themselves liberals. Conversely, many liberals regard multicultural concerns as fully compatible with a sophisticated form of liberalism (Nino, 1993). In line with such interpretations, I wish to argue that multiculturalism matters far less than generally thought. Multicultural adjudication of ethnic claims would, in practice, probably look surprisingly similar to liberal adjudication.

## WHEN WOULD MULTICULTURALISM MAKE A DIFFERENCE?

In order to be more specific about these issues, we need now to move away from a 'generic' characterisation of multiculturalism. The subsequent discussion therefore depends on which theorists are judged to be typical – but not, I think, to the point that it ceases to have a wider application. As an illustration from theory of multiculturalism's comparative lack of political 'cutting edge', I propose to refer to two philosophers, both of whom defend variants of multiculturalism, but only one of whom calls himself a liberal. It is no coincidence that the practical political contexts to which their theories refer are also quite different.

In a series of papers, Bhikhu Parekh considers modes of immigrant incorporation in Western Europe, with particular reference to the UK, and seeks to identify and defend what he calls a plural or pluralist model based on respect and support for minority cultures and the groups defined by them (e.g. Parekh, 1992, 1993, 1994). The empirical point is that people are deeply attached to their culture, and feel a profound sense of loss when it is damaged, even in the absence of more tangible socio-economic deprivation. Assimilation for prosperity is not, in Parekh's terms, a trade-off that would make any sense to anyone who thought about it for more than a moment. Not only is 'assimilationism' – the active demand, backed up by policy, that postmigratory groups should disappear – unjustifiable and indeed offensive; even *de facto* assimilation based on voluntary individual adjustment is a form of *structural violence*. In more theoretical terms, identity is not an 'interest': it is not something we 'have' but rather something we are – or better, the very mode of our being. To lose one's culture is in a very real sense to cease to be oneself. There is therefore no framework within which, either *ex post* or *ex ante*, such a loss could be interpreted as a 'choice'. The situations are simply incommensurable. The state, therefore, has a duty to promote cultural survival, and such a duty in no way creates conflicts between, say, individual and collective rights: rather it expresses precisely the inherently collective nature of individuality. Parekh, quite logically, does not assign to multiculturalism any coercive dimension. If people were genuinely free to adapt, to adjust and to change, they would feel less constrained to do so. The point is clear enough, but it is debatable whether, in the cases with which Parekh is mainly concerned, the ideological context of secular liberalism is a primary causal factor in the supposedly detrimental process of assimilation. And more importantly for my purposes here, this is an *empirical* issue that cannot be resolved solely by reference to conceptual analysis. It may be plausible to regard assimilation – whatever one may think of it norma-

tively – as mainly a side-effect of broader socio-economic dynamics, especially since the ideological attraction of Western culture to immigrants has waned. But this implies that non-coercive multiculturalism would have little practical impact on cultural assimilation, regarded as combining the blurring of boundaries between groups, through intermarriage and analogous processes, and substantive convergence, through hybridisation of cultural practices. It may indeed establish grounds for certain kinds of claims to be legitimate, but no grounds on which to criticise a system in which such claims simply do not occur. It is rather a transitory feature of a society in the process simultaneously of adapting to cultural diversity and of eroding it. Conversely, a multicultural system with coercive features might facilitate the *survivance*, to use the *québécois* word, of cultural groups, but at a high normative cost. Parekh has suggested on several occasions that non-liberal structures analogous to the Ottoman *millet* might be a relevant multicultural template. How such sharp, legally defined, group boundaries might function empirically within the fluid context of contemporary Western societies is an open question: my speculation would be, on standard Durkheimian grounds, that the *millet* would lose out to MTV. Normatively, however, things are clearer. To emphasise the inherently collective nature of individuality is not to say that any collective offers a valid framework for individuality, still less that one should be tied administratively to the collective into which one happens to have been born. There may be a normative argument for such a position, but Parekh does not provide it.

Bhikhu Parekh would not define himself as a liberal. Will Kymlicka, on the other hand, does. Like others of a multicultural persuasion, however, he argues that mainstream liberalism has generally been unresponsive to minority demands in ways that are both unjust and unnecessary, given the resources available within the liberal tradition, properly understood, for dealing with minority issues. It is possible in principle, therefore, to adjudicate minority claims in ways compatible both with social cohesion and with justice, without sacrificing the core liberal values of autonomy and tolerance about which Parekh is sceptical. As Kymlicka puts it, in a critical discussion of the kind of *millet* system that Parekh finds attractive in some respects, ‘liberals have historically seen autonomy and tolerance as two sides of the same coin. What distinguishes *liberal* tolerance is precisely its commitment to autonomy – that is the idea that individuals should be free to assess and potentially revise their existing ends.’ (1995a, p. 158: author’s italics). The model that conforms to these apparently incompatible requirements he calls ‘multicultural citizenship’. An essential feature of the model, as we have seen, is that it claims to combine two perspectives: objective (focused on needs or interests) and subjective (focused on wants or wishes). The practical stuff of ethnic politics is, necessarily, made up of the claims actually made by identifiable

political actors. However, what makes the claims relevant is that they reflect the interests of distinct social groups. And such interests are, precisely, less challenging to liberals than generally realised. Undoubtedly certain actors may formulate demands that seem unacceptable. 'Some demands for polyethnic rights take the form of withdrawal from the larger society, although this is more likely to be true of religious sects than of ethnic communities *per se*. (...) Moreover, it is important to note that these exemptions for religious groups have a very different origin and motivation from the current policy of 'multiculturalism'. (...) some British Muslims have demanded the same sort of exemption from a liberal education granted to the Amish. But again these are atypical.' (1995a, p. 177) Opposition to such 'atypical' claims therefore provides no reasonable basis for rejecting others that are both more probable and more plausible. This analysis provides the context for Kymlicka's key distinction, on both conceptual and political grounds, between ethnic groups (essentially voluntary migrants and their descendants) and national minorities. The former have an objective interest in full citizenship on a truly equal basis, and by claiming it raise no issues of principle that cannot be accommodated by a pragmatic non-ethnocentric liberalism. Actual liberal societies may of course be deeply ethnocentric, but they have no basis in justice for remaining so. National minorities, on the other hand, have a legitimate interest in self-determination, which is precisely what they generally demand. Criteria for adjudication that are relevant to ethnic groups are simply inapplicable to them. In some cases, the solution may be peaceful separation or standard territorial federalism, neither of which, on Kymlicka's interpretation of the liberal tradition, raises major theoretical or practical problems. In other cases, however, including that of autochthonous peoples in Canada, neither separation nor standard federalism is practically viable: the interest of such groups, and their actual claim, is 'that they are distinct "peoples", with inherent rights of self-government. While they are currently part of a larger country, this is not a renunciation of their original right of self-government. Rather it is a matter of transferring *some aspects* of their powers of self-government to the larger polity, on the condition that other powers remain in their own hands.' (1995a, p. 181; author's italics). Such a claim is of course deeply paradoxical in the terms of traditional theories of uniform and exclusive sovereignty, since it involves recognition of separate and self-governing societies that are simultaneously, in different respects, *along-side* and *within* the mainstream society. This, however, simply proves that such terms are inadequate, as is the international system premised upon them.

As Kymlicka defines the challenge to liberalism from ethnic diversity, he can plausibly claim to have met it. The questions that remain are whether such is in fact the challenge, and, if so, whether there is anything distinctively 'multicultural' about the response. In

normative terms, his suggestions are, by design, largely indistinguishable from a sophisticated version of mainstream liberalism: it is hard to argue that Kymlicka has established a clear difference between 'multicultural' citizenship and citizenship *tout court*. In this sense, his multiculturalism is of a quite different philosophical character from Parekh's. The two perspectives are, on the other hand, much closer in their interpretation of the challenge to liberalism formulated by minority demands. What is 'multicultural' about multicultural citizenship, in other words, is its *sociological* analysis of the context in which questions about citizenship arise. This, by definition, is primarily an empirical rather than a normative issue.

If we assume, for the sake of argument, that what is common to the very different approaches of Parekh and Kymlicka is characteristic of multiculturalism in general, we are therefore faced with a theoretical claim that three separate logics converge on a single point:

1. the objective interests of minority groups subjected to specific patterns of exclusion related to their cultural distinctiveness;
2. the internal contradictions of mainstream liberal citizenship faced with cultural difference;
3. the practical political demands formulated by agents challenging existing institutions and ideologies in the name of disadvantaged groups.

Without the convergence of 1. and 2., it would not make sense to regard the problem of justice in culturally diverse societies as a 'challenge to liberalism'. And if 1. and 2., jointly, did not converge with 3., it would be implausible to assume that addressing the challenge to liberalism would solve the practical problems of identity politics – or, conversely, that practical responses to the demands raised by identity politics would necessarily fit into any coherent pattern of justice.

The kind of convergence generically required by multiculturalism lies on the border, or rather at the 'joint' – what is called in both ordinary and theoretical French '*articulation*', often lazily translated into English as 'articulation' –, between political theory and sociology. The issue is, in general terms, both how to identify empirical facts and how to interpret them theoretically. In the specific case of the multicultural argument, the key problem is the idea of a 'group'. A feature of multiculturalism is the tendency to run together 'logics' 1 and 3, as stated previously, by verbal sleight of hand rather than by explicit empirical argument. Thus, the full text of the quote from Kymlicka (1995a, p. 181) given earlier runs '*National minorities claim that they are distinct "peoples"...*' (my italics). What this actually means, empirically, is 'identifiable political agents, claiming to represent national minorities, claim on their behalf that...'. The effect of Kymlicka's compression is to state, albeit implicitly, that such agents

*justifiably* claim to represent national minorities. The general issue of representation, which is of central importance in the political-theoretical tradition, cannot be discussed here in detail. Suffice it to say that it is broadly accepted that claims to represent are ultimately 'performative': when successful, they *create* what they purport to *express*. Thus the 'working class' as a politically relevant category, and potentially as a self-conscious group, is in a very real sense the product of what is done in its name by trades unions, socialist parties and other 'representatives'. Conversely, some claims to represent fail: for instance British antiracism in its attempt to create a common front of all the victims of racism under the banner of 'political blackness' (Modood, 1992). The simplest way of summarising this in sociological terms is to say that representation brings into play *categories*, which, by being represented, are transformed into *groups*. A category has no identity content: it exists solely by virtue of someone's taxonomy. A group, on the other hand, in standard sociological parlance, exists by being recognised, both by members and non-members; groups, in other words, inherently involve *identity processes* (Young, 1990).

One set of questions about representation therefore focuses on the conditions of its plausibility. In which circumstances are claims to represent likely to succeed, in the sense of being widely subscribed to? Such success is, of course, a powerful political resource: it is a key factor in determining what counts in terms of 'logic' 3. Since many factors other than claims to represent enter into social processes of identity, we may reasonably assume that the success of representation has something to do with how it 'fits' into this broader context. However, to say that a claim to represent 'works' is not to say that it is justifiable. The second set of questions raised by Kymlicka's apparently trivial compression is, therefore, on what basis successful claims might be regarded as illegitimate, or failed claims as in fact justifiable. In order to run together 'logics' 1 and 3, it would be necessary to show that, at least in the case of cultural minorities, the bases for success and for justification are in fact identical. This is clearly not true in any general sense. Successful claims to represent are often challenged politically in the name of competing conceptions of the interests of some or all of the people involved. Thus, to take a familiar example, nationalism may have the effect, and perhaps the intention, of dampening class-consciousness; socialists may therefore argue that the Proletariat in fact has no country. Conversely, the political failure of socialism does not, in itself, prove that capitalism is just. The tendency of multicultural theorists to offer generic statements of minority demands, which run together political impact and normative justification by referring to categories rather than to groups, obscures these questions. In order to pursue the argument, we must therefore focus specifically on the dynamics of group formation.



In the following section, I propose to argue that, while the use of 'culture' to define social *categories* is unobjectionable in theoretical terms, its use as an operator to define group *boundaries* is sociologically inadequate, and therefore politically irrelevant. We may speak, as a kind of convenient shorthand, of the 'rights of cultures' or of people 'belonging to cultures' (though one rarely hears or reads, interestingly, of 'claims' being ascribed to 'cultures'). But it is important to remember what it is shorthand for. If multiculturalism is to be a mode of adjudication, a practical set of policies that might make an observable difference to the way in which formally democratic systems, it must necessarily apply to real politics: to agents speaking for groups, and competing with other putative spokespersons. 'Cultures' are not agents, nor are they groups: they are part of the language in which political claims are formulated and justified. Kymlicka's 'stipulative definition' – 'I am using "a culture" as synonymous with "a nation" or "a people"' (1995a, p. 18) – obscures this distinction by simply defining it away. Furthermore, the idea of a 'cultural group' (as distinct from a 'category') is in itself problematic. In the absence of the kind of compulsion and administrative monitoring that would possibly stabilise group membership, but would be rejected on normative grounds by both liberals and multiculturalists, the survival of a group is likely to boil down to the contingent desire of its members to perpetuate it. But this is precisely the conclusion multiculturalists wish to avoid. What threatens 'difference', and therefore equal citizenship, in formally democratic societies is, in their view, a social structure of opportunities that tends towards assimilation even when no one consciously desires it. To deal with this apparent dilemma, however, is not a matter for political theory alone: it demands serious *sociological* consideration of identity.

## **ASCRIPTIVE IDENTITY PROCESSES AND GROUP FORMATION**

Purely voluntary groups survive, by definition, only if their members wish them to, and there is no criterion outside such wishes by which to judge whether they 'ought to' survive. Multiculturalism therefore logically has little to say about purely voluntary groups. It necessarily presumes, on pain of irrelevance, that groups defined in cultural terms are not simply voluntary. This means both that they are in some sense 'ascriptive' – that one 'finds

oneself' belonging to them rather than choosing to a member – and that such ascription is recognised, however reluctantly. As Williams (1996) puts it, groups arise from the conjunction of memory and history. Recognition here does not imply normative justification – simply acceptance of social patterns of ascription as 'facts of life', even though they may, simultaneously, be rejected in normative terms (Young, 1990). The sociological basis of multiculturalism therefore depends on the coherence of this picture of the role of culture in ascriptive identity processes and group formation.

At a general level, on the basis of the broad features that characterise the European and North American societies to which multiculturalism is supposed paradigmatically to apply, the role of culture in ascriptive identity processes seems peripheral. The reason is certainly not that such processes do not exist, or even tend to be eroded by individualistic fluidity or mobility. On the contrary, there are good empirical grounds for concern about the decay of 'organic solidarity' in post-industrial societies, which leads economic inequalities to be reformulated in identity terms. The ambivalent term 'underclass' has often served both to express this reformulation and to criticise it. However, if we take a theoretically sophisticated perspective on what I shall call here 'belonging', incorporating both formal membership and the subjective dimension of 'feeling oneself to be a member' (Crowley, 1999), we are led empirically rather away from culture than towards it. Among the 'modes' of belonging in contemporary Western societies, three of the most important bear little relation to culture. I shall not discuss here issues of class formation, in the broad sociological sense of the ways in which status with respect to modes of production may influence processes of collective identity. I shall concentrate rather on two related sets of concerns, which are rather less familiar and express features of the 'managerial' (Oakeshott, 1975) or 'biopolitical' (Foucault, 1978, 1979, 1981, 1988) state. The very fact that one can plausibly yoke together here two theorists like Oakeshott and Foucault, whose background, political agendas and philosophical references are diametrically opposed, is an indication – though not of course proof – that something important is at stake. At both levels, ascriptive identity processes and at least potential group formation are clearly at stake, but culture has very little to do with it.

The first level is the problematic relation between group formation and boundary maintenance. Ultimately, the relation is undoubtedly circular, but for empirical purposes it is necessary to open the circle, and the way this is done has important implications. It is often either stated explicitly or assumed implicitly that social boundaries are the product of prior differentiation. Yet, quite apart from the fact that some forms of differentiation may be so artificial as to make their 'prior' character implausible, it is widely accepted that *all* forms of

differentiation, even when they rely on natural attributes, are socially constructed. To take a familiar and straightforward example, an individual's skin colour is, roughly speaking, a natural attribute – though even that may be affected by illness, by natural processes strongly influenced by social context, such as exposure to the sun, or by a range of artificial technologies from sun-lamp tanning to chemical bleaching. However, even if we agree to ignore the complications and regard skin colour as strictly 'natural', this gives no information about its significance as a factor of social differentiation. Not only is the meaning of skin colour highly variable, but its very designation is arbitrary. In particular, the lumping together of a wide range of dark skins as 'black', which is a feature of colonial and post-colonial racism, would seem bizarre to anyone not already attuned to it. But this implies that it is empirically inadequate to base one's analysis of group formation on 'prior differentiation'. As much of the anthropological literature on the subject has stressed, cognitive and social boundaries arise together (e.g. Barth, 1969; Eriksen, 1993, Poutignat & Streiff-Fenart, 1995), and it is generally more fruitful in methodological terms to start from the practical, micro-social processes of boundary definition and maintenance. In other words, distinctions between groups are, in practice, distinctions between *people* who are individually or collectively assigned to them. The distinctions are thus established in being *used*. They may, of course, be purely consensual, but it is often both more interesting and normatively more important to focus on *ascription*, which may be highly coercive. It is a commonplace that groups are often defined by, and for the purposes of, violence against their members; but even in the absence of violence, boundary maintenance is usually inseparable from resource allocation. This does *not* mean that identity processes are purely instrumental adjuncts to competition for scarce goods. Such may sometimes be the case, but it is also quite possible for participants in boundary processes where resources are at stake to believe quite sincerely that the distinctions being drawn are truly prior and deeply real. Indeed, the most horrifically violent forms of boundary maintenance quite possibly *require* sincerity of belief.

What is characteristic of contemporary Western societies is the existence of a wide range of procedures, implemented in different ways, for different purposes, and by different gatekeepers, which allocate a variety of resources. Their fragmentation is not simply accidental, but often entrenched in institutional rules designed to protect individual freedom – and thus, in effect, to promote individualisation. Relevant examples are rules preventing schools from checking the immigration status of their pupils' parents, social security agencies from using tax data to identify fraudulent claimants, employers from having access to employees' medical records, etc. (These examples are French. Institutional fragmentation is of course, for various reasons, less pronounced in some other countries.) Indeed the

existence of separate 'spheres' of distribution – pertaining to money, health care, education, cultural goods, self-respect, etc. – has been explicitly defended as a criterion of social justice (Walzer, 1983). Thus, boundaries are drawn in a complex, shifting social space structured by highly heterogeneous 'policing' operations. But if we regard belonging a property associated with boundary definition and maintenance, this means that there are in principle as many forms and places of belonging as there are forms and places of social differentiation. The very idea of a 'group' in a such a social framework therefore appears, on theoretical grounds, as an exception, and a rather improbable one at that. And even when groups crystallise, they will tend to do so in terms of solidarity embedded in resource allocation. It is not, as we shall see, impossible to make room for culture in such a framework – but the argument required is subtle and sophisticated.

The second level, which supports the same conclusion, derives room consideration of the features of a 'welfare' state taken seriously. As Oakeshott and Foucault agree (though their historical accounts are rather different), such a state is inadequately defined in terms of the rights that individuals enjoy within it. Rather, social rights characterise one form – a comparatively late one in historical terms – of the state understood generically as a collective enterprise aiming at the welfare of its population. As Foucault shows, the very idea of a 'population' as having attributes such as health, vitality, wealth, etc. derives not from 'common sense', though we may today take it for granted, but from a specific historical construction within which the individual as a moral agent and a potential rights-bearer has a rather tenuous position. The implications for the kinds of boundary processes characteristic of such a 'welfare state' are considerable. In order to be efficient and to conform to the criteria of justice that are supposed to govern it, it requires in principle ever finer determinations of need, entitlement and resources, and ever more individualised allocations of benefits. The boundaries of the welfare system thus make a real difference to the people involved, and therefore, *prima facie*, have the potential to promote identity processes. If the tendency towards individualisation was taken to its logical conclusion, it would probably counteract this 'identity potential'. But for very tangible sociological reasons, it cannot be. The welfare system can avoid overload and paralysis only by introducing a range of shortcuts that define need and resources – *eligibility* – presumptively on the basis of formally or informally ascribed group membership. *Prima facie* assessments of eligibility, in other words, are necessarily based on *suspicion*. However, the 'status groups' (Rex & Moore, 1967) that the welfare state thus tends to produce are unlikely to correspond closely to cultural distinctions. Suspicion may of course operate on the basis of observable cultural practices such as language and dress, but there is no reason in general to assume that

culturally defined categories will exhibit a high degree of socio-economic homogeneity. The logic of the welfare state will therefore tend to fragment cultural groups, to the extent that they exist.

If culture plays a role in ascriptive identity processes, it must therefore be in ways that derogate from this general framework. The form of such an exception is fairly easy to define. If groups emerge from boundary processes that both designate a category of people and make sense to them in terms of identifying their 'commonality', then a 'cultural group' – the members of which recognise themselves and are recognised by others by reference to culture – must be based on cultural boundary processes that are sufficiently powerful to overcome general tendencies within contemporary Western societies towards multiple membership, and therefore individualisation. In principle, one could imagine such processes being generated by the group itself, as a mechanism for protection of its own integrity. Examples exist, but as Kymlicka stresses, in a passage quoted earlier, they are unusual, and in general quite unrelated to the characteristic concerns of multiculturalism. It is more relevant here to consider the symmetrical case, where a group's identity is consolidated by ascriptive processes primarily policed by outsiders on the basis of cultural attributes, and intended, in more or less deliberate ways, to perpetuate its subordinate position. The phrase 'cultural racism' has been suggested by a number of writers as convenient shorthand for such a case.

If 'cultural racism', as thus defined, is a significant phenomenon – even if it affects only certain categories in peculiar situations –, then at least some cultural groups exist. In that case, the multicultural assumption that one can run together the objective interests of such categories and the claims made on their behalf is plausible. For my argument in this paper, it is therefore of crucial importance to clarify the validity of the concept of 'cultural racism'.

The basic idea is undoubtedly reasonable enough. After all, if forms of hostility to people based on their appearance – their 'race', 'ethnicity' or 'origins' – and forms of hostility based on their behaviour, the way they eat, the way they dress, and so on, exhibit similar political dynamics and have similar effects, then it seems appropriate to regard them as variants of a more general phenomenon called 'racism'. Whether, on closer analysis, cultural racism actually has the status of a *concept* is however unclear. A working definition can be derived quite readily from contributions to the debate in France and the UK (e.g. Barker, 1981; Modood, 1992, 1997; Taguieff, 1987; Wieviorka, 1991, 1997). Cultural racism is

generally defined as a set of beliefs – or of attitudes and practices that only make sense in the light of such beliefs, whether or not they are actually held or recognized – that postulates (a) the inevitable perpetuation of culturally distinct communities (b) on the basis of a culture unchanged at least in essentials (c) because of the supposedly natural character among human beings of culturally strong forms of membership; and (d) that while ‘unnatural’ societies (in the terms of c) may exist, they are normatively inferior, necessarily prone to systemic conflict, and ultimately unable to survive. One form of cultural racism, extensively analyzed in the British case, is a conception of nationhood as ‘natural’, as opposed to supposedly ‘artificial’ modes of social organization, such as, specifically, multiculturalism. Whether anyone actually holds such beliefs is arguable. I suspect that they often serve as a euphemism for common or garden racism, which is widely regarded as unacceptable in public debate, but I shall not pursue this here. There is certainly evidence, however, that many people speak and act in a way that presumes some such framework, even if it is not articulated: the essentialisation of Islam is the most striking example.

However, there are good reasons for thinking that cultural racism as thus defined is incoherent, not because racism framed in cultural terms does not exist, but because the kinds of ascription it involves are unlikely to lead to the formation of cultural groups. This appears more clearly if one takes explicit account of the problem of assimilation, which, as discussed briefly in section 2, is in a sense the missing term that, by a sort of ghostly presence, orders and structures debate about multiculturalism. Both the opponents and proponents of assimilation (as a process rather than as a policy: on the distinction, see Crowley, 1993) seem to regard it as highly problematic, either in general or in the peculiar circumstances of contemporary Western societies. The argument is both analytical and normative. On the one hand, it is claimed that, perhaps as an aspect of a broader crisis of the nation-state, assimilation no longer occurs. On the other hand, assimilation is regarded, even to the extent it actually takes place, as being at least unfortunate, and perhaps even positively undesirable. Yet it is difficult to find clear empirical evidence for the first claim – which, indeed, the very urgency of the multicultural concern tends to invalidate. For better or for worse, assimilation is an ongoing process, and arguably, in the context of ‘consumerised’ culture, a more powerful one than ever before. To this extent, cultural racism is analytically false. The point is not, of course, that other kinds of racism are ‘true’ in the sense that their supposedly scientific premises are correct. On the other hand, they are ‘true’ in the self-fulfilling sense of offering valid social predictions when they are sufficiently coercive to produce boundary processes consistent with their premises. And this is precisely what cultural racism, given routine assimilation, seems unable to do. The normative claim, which

enables political claims to be identified as compatible with the interests of social categories, must therefore stand or fall by itself.

The incoherence of cultural racism can also be formulated in a more theoretical, but essentially equivalent, way. The attempt to frame culture as an 'inheritance', without which cultural 'groups' would not be clearly distinguishable from voluntary associations, is incompatible with precisely the social conditions that make culture politically sensitive. What is at stake in the politics of identity is the challenging of cultural boundaries, which calls upon people to justify reflexively what they take for granted; but this in itself precludes any primordial or pre-reflexive status for the cultural practices at stake, and thus, ultimately, removes them from the realm of culture altogether. In other words, cultural self-defence is in itself a culture-modifying practice. As a consequence, cultural racism is politically incoherent. Its significance depends on the assumption that one can meaningfully define a mapping of cultures onto social groups, but the implementation of racist cultural stereotypes tends, because of the inherent logic of social boundary processes, to preclude any such mapping. But multiculturalism is, in this respect, in a symmetrical position. It can have a political cutting edge only if it is distinct from and supplementary to principles such as equality, justice, non-discrimination, and citizenship, which means, in practice, that adjudication based on multiculturalism should disallow claims that would otherwise be allowed, or conversely meet demands that would otherwise be rejected. Since what is distinctive about multiculturalism is that it evaluates claims *inter alia* by reference to their cultural background and significance, its cutting edge depends on the coherence of such reference. In other words, as with cultural racism, albeit for opposite normative reasons, multiculturalism makes a difference to the practical politics of identity only if cultures can be mapped meaningfully onto social groups. No doubt this may be possible in specific cases, but it is hard to make a *general* argument for such a mapping. To this extent, given the sociological dynamics of group formation to which it relates, multiculturalism is perhaps far less distinctive than either its proponents or its critics seem to think.

## ADJUDICATION: 'POLITICAL NOT METAPHYSICAL'?

To say that multiculturalism is not distinctive is by no means to deny its relevance. General principles of equal citizenship invariably have blind-spots with regard to hidden forms of inequality that have sufficient ideological power not to be challenged politically. Culture is undoubtedly one of those blind-spots, and multicultural critique has played a major role in enhancing the degree of reflexivity and self-criticism within liberalism. But a significant factor in its effectiveness has been the extent to which it is an *internal* critique.

None of this, however, implies that cultural issues are not politically divisive and difficult to solve and do not require serious normative thought. Important and challenging demands made by groups with significant political resources must be dealt with – *adjudicated*. No theoretical argument that the category they claim to represent does not exist, or that the reasons advanced do not make sense, will in itself make a pressure group go away, although there are of course a number of ways, involving various combinations of deliberation and bargaining, in which claims may be withdrawn or modified. The usual mode of operation within formally democratic systems is that claims are met in rough proportion to their capacity to mobilise resources. A mixture of blackmail and log-rolling is the vernacular idiom of what political science has traditionally called interest-group pluralism. It is difficult to provide any coherent normative justification of such a system: the perspectives of democratic idealism, of sophisticated liberalism, of citizenship, and of multiculturalism, would not, in this respect, be very different. No critique, however, can escape the practical necessity of adjudication.

No one, then, would argue that cultural claims be evaluated by their command of resources. Powerful groups may make demands that are grossly unjustified; excluded groups may be unable to make themselves heard at all. On the other hand, any criterion for adjudication that either takes political claims at face value or works from an objectivistic conception of culture is likely to be theoretically incoherent and – more importantly – practically inoperative (Lijphart, 1991). How then might forms of adjudication be conceived that take account of the cultural dynamics of inequality without reifying culture? It is impossible here to offer any kind of full discussion, but some useful angles do suggest themselves.



First, adjudication in a democratic context is necessarily a *deliberative* process, in the Habermasian sense (Habermas, 1992). In principle, one could imagine deliberation being an ideal standard by which practical decisions are to be judged. It is possible for an administrator to take a decision on, say, the terms on which Muslim schools may receive state funding not in the context of an actual discussion, which will inevitably be distorted by unequal resources, but in the light of a judgement about what could in principle be justified (in law, morality or reason) if a hypothetical discussion took place. Indeed, the judicial procedures to which administration is subject presume such a procedure as a criterion for unreasonable or unlawful decisions. However, this raises two difficulties. First, it gives an inadequate picture of the very stuff of ethnic claims, which do not fit within an established political-judicial framework – if they did, the multicultural problem would not exist in the first place. The whole point of many cultural claims is to highlight insensitivity based on ignorance or prejudice; but a culturally insensitive adjudicator cannot, *ex hypothesi*, adjudicate in ways susceptible of general acceptance. Secondly, and relatedly, such a scheme ignores the issue of recognition which, equally, is at the heart of the practical dynamics of ethnic mobilization. Political inclusion in a context where a pre-existing common normative framework does not exist depends crucially on *actual* deliberation, which reflects a recognition of legitimate participation (Philips, 1995; Young, 1990). As a consequence, the question of adjudication as a technique or a mode of discourse cannot be separated from the participatory institutions that make deliberation a practical reality.

Thus, participatory deliberation, where possible, addresses by its very structure the problems with which multiculturalism is concerned at two levels: it offers a form of recognition of legitimate political membership that responds to symbolic exclusion; and furthermore it creates the conditions for adjudication based on public justification in the light of reason. Some major problems, however, remain. Can the various parties' willingness to participate in such a process be founded without presuming that the conditions that make it necessary have disappeared? After all, even just claims are not necessarily motivated by a concern for justice. In the absence of such willingness, the possibility of something approximating to participatory deliberation depends purely on circumstance, and specifically on the resources available to minority groups. Practical justice is thus dependent on a balance of power – a general problem that Habermas, in particular, struggles with rather unsuccessfully. Furthermore, even if circumstances were favourable, such a participatory deliberative approach would come very close to saying that a stable system of adjudication requires that cultural minorities first be liberal in order to be entitled to claim the right not to be liberal. That is not empirically implausible, but hardly addresses the normative issues.

Strong deliberative democracy is inherently *transformative*: in the view of those who defend it, that is precisely its *raison d'être*. No doubt multiculturalism too can be transformative, in a sense, but it is hard to imagine how it might remain relevant while dropping any commitment to the relative fixity of cultures and of the boundaries of cultural groups. It is perhaps no coincidence that a typical formulation of the aspiration to multicultural justice ends up reading like a contradiction in terms: 'Only psychological dispositions, cultural expressions, and political institutions able to loosen but not dissolve borders, make them permeable and *undecidable*, at the same time that they create *guarantees* of group *self-definition* and representation in the public, can hold the hope of a more peaceful and just future for the world.' (Young, 1990, p. 260; my italics).

Practical politics requires adjudication. Unless power is accepted as the sole criterion of judgement, adjudication raises considerations of equity. But no principle of equity, justice, or fairness, can entirely neutralise power *a priori*. This circle seems inescapable as far as 'entry' claims are concerned, at least when minority demands for inclusion are at issue, since power is in this case a practically vacuous criterion and not simply a morally objectionable one. It is perhaps marginally less compelling when claims involve 'exit', to the extent that a majority's unwillingness to use to force is a minority resource. But this is hardly a normative argument. One may dream of a standard by which ethnic claims in general might be judged – including the most troubling claims, those that because of radical exclusion are never actually made. The argument offered here, however, suggests that, because of the nature of claims relating to culture in the light of their sociological context, no such standard is available. This is why, adopting and twisting a quotation from John Rawls, adjudication is 'political not metaphysical'. There is nothing outside actual politics – including all its constitutive messiness, immorality, contingency and incoherence – that determines the just adjudication of ethnic claims. Theorists such as Kymlicka correctly stress that certain classes of claims fit neatly into general theories of justice – specifically the 'entry' claims of ethnic minorities demanding inclusion and the (partial) 'exit' claims of national minorities demanding self-government, at least when they are consistent with the liberal conception of freedom as autonomy. However, most controversial claims fall into the grey area where their legitimacy is theoretically indeterminate. Because culture is, as the multiculturalist paradigm correctly stresses, a language in which social interaction is conducted, it is itself transformed as the boundaries, terms and stakes of social interaction are transformed. But this comes very close to suggesting that democracy itself, with its potential to mobilise considerations of equity with reference to ethnic claims, expresses precisely the implicit bias towards assimilation against which multiculturalism is designed to guard.

## References

- Baker J. (ed.), *Group Rights*, Toronto, Toronto University Press, 1994.
- Barker M., *The New Racism. Conservatives and the Ideology of the Tribe*, London, Junction Books, 1981.
- Barry B., "Social criticism and political philosophy," in *Liberty and Justice. Essays in Political Theory 2*, Oxford, Clarendon Press, 1991, pp. 9-22.
- Barry B., "How not to defend liberal institutions," in *Liberty and Justice Essays in Political Theory 2, ibid.*, pp. 23-39.
- Barth F. (ed.), *Ethnic Groups and Boundaries. The Social Organization of Cultural Difference*, London, George Allen & Unwin, 1969.
- Calhoun C. (ed.), *Social theory and the politics of identity*, Oxford, Blackwell, 1994.
- Cooper W. E., "Culture vultures and the re-enchantment of citizenship," in *Räikkä*, 1996, pp. 21-40.
- Crowley J., "Paradoxes in the politicisation of race: A comparison of the UK and France," *New Community*, 19(4), 1993, pp. 627-643.
- Crowley J., "La transparence du politique et ses limites: négociations d'intérêts et pluralisme 'moral'," *Politique et Sociétés*, 17(3), 1998, pp. 37-58.
- Crowley J., "The politics of belonging: some theoretical considerations," in Adrian Favell, Andrew Geddes (eds), *The Politics of Belonging. Migrants and Minorities in Contemporary Europe*, Aldershot, Ashgate, 1999, pp. 15-41.
- Crowley J., "Les usages de la culture, ou les limites sociologiques du multiculturalisme normatif," in Hélène Greven-Borde, Jean Tournon (eds), *Les identités en débat: intégration ou multiculturalisme ?*, Paris, L'Harmattan, 2000, pp. 15-42.
- Eriksen T., *Ethnicity and Nationalism: Anthropological Perspectives*, Oxford, Oxford University Press, 1993.
- Føllesdal A., "Minority rights: a liberal contractualist case," in *Räikkä*, 1996, pp. 59-83.
- Foucault M., "La 'gouvernementalité'," in Foucault, 1994 [1978], vol. III, pp. 635-657.
- Foucault M., "Naissance de la biopolitique," in Foucault, 1994 [1979], vol. III, pp. 818-825.
- Foucault M., "'Omnes et singulatim': towards a criticism of political reason," in Foucault, 1994 [1981], vol. IV, pp. 134-161.
- Foucault M., "The political technology of individuals," in Foucault, 1994 [1988], vol. IV, pp. 813-828.
- Foucault M., *Dits et écrits* (Daniel Defert, François Ewald, eds), Paris, Gallimard, 1994, 4 vol.
- Galenkamp M., "The rationale of minority rights: wishes rather than needs?," in *Räikkä*, 1996, pp. 41-57.
- Goldberg D. (ed.), *Multiculturalism. A Critical Reader*, Oxford, Blackwell, 1994.
- Habermas J., *Faktizität und Geltung. Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats*, Frankfurt, Suhrkamp Verlag, 1992.
- Kymlicka W., *Multicultural Citizenship. A Liberal Theory of Minority Rights*, Oxford, Oxford University Press, 1995.
- Kymlicka W. (ed.), *The Rights of Minority Cultures*, Oxford, Oxford University Press, 1995.
- Lijphart A., "Self-determination versus pre-determination of ethnic minorities in power-sharing systems," in David Schneiderman (ed.), *Language and the State. The Law and Politics of Identity*, Cowansville, Yvon Blais, 1991, pp. 153-165.
- Modood T., *Not Easy Being British. Colour, Culture and Citizenship*, Stoke-on-Trent, Trentham Books / Runnymede Trust, 1992.

- Modood T., " 'Difference', cultural racism and anti-racism," in Werbner, Modood, 1997, pp. 154-172.
- Nino C. S., *The Ethics of Human Rights*, Oxford, Oxford University Press, 1993.
- Oakeshott M., "The character of a modern European state," in *On Human Conduct*, Oxford, Oxford University Press, 1975, pp. 185-326.
- Packer J., "On the content of minority rights," in Rääkkä, 1996, pp. 121-178.
- Parekh B., "The cultural particularity of liberal democracy," in David Held (ed.), "Prospects for democracy," *Political Studies*, 40, special issue, 1992, pp. 160-175.
- Parekh B., "A misconceived discourse on political obligation," *Political Studies*, 41(2), 1993, pp. 236-251.
- Parekh B., "Discourses on national identity," *Political Studies*, 42(3), 1994, pp. 492-504.
- Philips A., *The Politics of Presence*, Oxford, Oxford University Press, 1995.
- Poutignat P., Streiff-Fenart J., *Théories de l'ethnicité*, Paris, PUF, 1995.
- Rääkkä J. (ed.), *Do We Need Minority Rights? Conceptual Issues*, The Hague, Kluwer Law International, 1996.
- Rawls J., "Justice as fairness: political not metaphysical," *Philosophy and Public Affairs*, 14(3), 1985, pp. 223-251.
- Rex J., Moore R., *Race, Community and Conflict: a Study of Sparkbrook*, Oxford, Oxford University Press, 1967.
- Schulte-Tenckhoff I., *La question des peuples autochtones*, Bruxelles, Bruylant, 1997.
- Taguieff P.-A., *La force du préjugé. Essai sur le racisme et ses doubles*, Paris, La Découverte, 1987.
- Taylor C., "The politics of recognition," in Amy Gutmann (ed.), *Multiculturalism*, 2nd edition, Princeton (NJ), Princeton University Press, 1994, pp. 25-73.
- Walzer M., *Spheres of Justice*, Oxford, Blackwell, 1983.
- Walzer M., *Interpretation and Social Criticism*, Cambridge (Mass.), Harvard University Press, 1987.
- Walzer M., *The Company of Critics. Social Criticism and Political Commitment in the Twentieth Century*, New York, Basic Books, 1988.
- Werbner P., Modood T. (eds), *Debating Cultural Hybridity. Multi-cultural Identities and the Politics of Anti-racism*, London, Zed Books, 1997.
- Wieviorka M., *L'espace du racisme*, Paris, Seuil, 1991.
- Wieviorka M., "Is it so difficult to be an anti-racist?," in Werbner, Modood, 1997, pp. 139-153.
- Williams M. S., "Memory, history and membership. The moral claims of marginalized groups in political representation," in Rääkkä, 1996, pp. 85-119.
- Young I. M., *Justice and the Politics of Difference*, Princeton (NJ), Princeton University Press, 1990.