

Recognizing the Other Solitude: Aboriginal Views of the Land and Liberal Theories of Cultural Justice

Ashwani Kumar Peetush

By August 14, 1990, the Canadian government had positioned more than 2500 soldiers outside of a small Mohawk community at Kanesatake and Kahnawake. After years of pleading with Oka residents and the Federal government, as a last resort, some Mohawks were forced to take up arms to defend what they considered to be their traditional lands. Evidently Oka residents felt that it was of critical importance to expand a nine hole golf course over disputed land that contained, among other things, burial grounds that were thought to be sacred by the Mohawks. Far from being an anomalous event, Oka exemplified the lack of respect and recognition that Aboriginal communities have had to endure for centuries and continue to endure. The *Royal Commission on Aboriginal Peoples* (RCAP), a detailed report on Aboriginal peoples in Canada, developed out of this conflict and the urgent need to address a historically fractured relationship. It notes that Canada has systematically violated the nation status of Aboriginal peoples, consistently violated its agreements with them, and forcibly attempted to assimilate these peoples into Western ways of life. Apart from living in dire poverty and poor health conditions on reserves, Aboriginal peoples suffer encroachment not only on their lands but on the very basis of their lives, their distinct cultural self-understandings and traditions.

Disputes over land are the major source of conflict between Aboriginal and non-Aboriginal peoples around the globe. But according to the Royal Commission, land claims do not simply have to do with economic settlements. They also involve, in a critical sense, respect and recognition for cultural differences. The Commissioners argue that these disputes will never be wholly resolved unless dialogue and negotiations are "guided by one of the fundamental insights from our hearings: that is, to Aboriginal peoples, land is not just a commodity; it is an inextricable part of Aboriginal identity, deeply rooted in moral and spiritual values" (1996, 430). For land permeates the "language, culture and spiritual values of all Aboriginal peoples" and "though Aboriginal concepts of territory, property, and tenure, of resource management and ecological knowledge may differ profoundly from those of other Canadians . . . they are no less entitled to respect." However, as the Commissioners explain, Aboriginal peoples have rarely been treated as equals and their cultural

self-understandings have rarely been recognized as legitimate ways of being in the world, without some attempt to reform them (425).

Such recognition is especially important in the context of a colonial history where Aboriginal self-understandings have been demeaned and degraded for centuries. But recognition in this context involves more than putting up with or being able to "tolerate" and endure differences. It requires mutual accommodation and being open to a sympathetic understanding and appreciation of each others' views. It requires engaging in intercultural dialogue. One need not agree with or adopt the particular self-understandings of a community, but an effort to understand is required, which involves giving these views serious weight and due consideration in one's thinking, and being at least open to the acknowledgement of their worth. This necessitates a theoretical framework in which such substantive and comprehensive issues are available for serious consideration, study and deliberation (and not somehow matters best left to the private or non-political domain).

A just stable social order in Canada is only possible through such recognition and sympathetic understanding of cultural differences. It can never arise from any further imposition of uniformity over oppressed Aboriginal nations. As the United Nations Charter asserts, formerly colonized peoples have a legitimate claim to pursue their social, economic and cultural interests within the boundaries of a peoples' right to self-determination. If a view is going to treat Aboriginal peoples as equals and acknowledge as legitimate their right to self-rule within Canada, then it will have to acknowledge as legitimate the demands of Aboriginal communities to define themselves according to their own self-understandings and pursue shared conceptions of the good (differing from those of the dominant culture) which those self-understandings may require.¹

¹ The United Nations' *Declaration On The Granting Of Independence To Colonial Countries And Peoples* (adopted in 1960) states: "The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the *Charter* of the United Nations and is an impediment to the promotion of World peace and co-operation" and that "all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development" (Articles 1 and 2, *Basic Documents on Human Rights*, 1989, 28-30). I assume that Aboriginal cultural communities in Canada constitute peoples who have the right to self-determination and whose nations' prior sovereignty and territorial integrity has been historically usurped. Although the principle of self-determination has been generally applied to overseas colonies and not to internal peoples, this has been widely criticized as arbitrary and the

Indeed, a crucial reason Aboriginal peoples demand cultural recognition is that, as Justice Mary Ellen Turpel puts it, they seek self-definition (38). These sentiments are echoed by the majority of Aboriginal spokespeople in North America. They want to be able to live according to their own differing traditions, self-understandings, shared ways of life and to survive as cultures. An integral aspect of this demand involves being able to promote some of their traditional self-understandings in their institutions. This is certainly the case with their views of the land.

I will examine a spectrum of dominant liberal theories of justice regarding cultural membership and its relationship to politics with respect to Aboriginal demands for self-determination. Specifically, I want to ask which position is best able to accommodate Aboriginal peoples' demand that they have the power to organize themselves according to their traditional views of the land, and that, for instance, they have the power to promote such self-understandings in their social institutions. Which position will be most receptive to their demand for cultural recognition and self-determination in this regard? In addition, I want to know which position is most open to the recognition of these particular views of the land themselves.

Since these liberal theories of justice themselves purport to be a response to "multi"-cultural diversity, I want to ask how well they are able to accommodate this key concern and interest of these non-Western cultural communities for cultural recognition and self-rule. And, I want to examine whether and to what degree these approaches are open to an intercultural dialogue, given their main theoretical premises.

The first position I examine asserts that cultural membership is not relevant to politics, but rather, is a private matter on par with religious affiliation. Jeremy Waldron (1992a, 1989) holds this view. I argue that far from being able to accommodate Aboriginal self-understandings, this position perpetuates an extreme form of cultural and historical oppression.

The second position grants cultural membership as having a limited relevance. In this view, cultural membership is a good mainly in so far as it is instrumental to the development of liberalism's value of individual autonomy. I argue that this is what Will Kymlicka's view amounts to (2001, 1995, 1989). I argue that this position too cannot accommodate Aboriginal views of the land and can only lead to

U.N. is currently in the process of examining a proposed *Declaration on the Rights of Indigenous Peoples* which would extend this principle to such groups.

assimilationist policies, since the value of cultural membership is only of instrumental importance to the liberal state for the sake of its own reproduction.

According to a third position, Charles Taylor's (1999c, 1994, 1993), cultural membership is conceived of as having a more extensive or wider relevance. It is argued to be an integral and independent good for a liberal society.² Such a society is characterized by a plurality of goods, cultural membership being one of the them. I argue that if liberals want to accommodate and recognize Aboriginal self-understandings about the land, or any other issue for that matter, then they must conceive of the relationship between cultural membership and liberal society in a manner similar to Taylor's.

To be clear here, the question I am asking is not which position can simply accommodate Aboriginal peoples' demand for land. I am asking which position can accommodate their demand that they be able to live according to their views of the land. The two issues are distinct: it is possible to accommodate, in theory and in practice, one without the other. One may think that dispossessed Aboriginal peoples, as a matter of justice, should get some land back. But one may think that their cultural views about the land, their spiritual relationship to the land, which the majority of Aboriginals claim to be an integral part of their cultures, are backward forms of religiosity beyond which they need to progress. And vice versa, one may deeply appreciate Aboriginal views about the land and think these make a unique contribution to humanity and present an alternate and legitimate manner of living in the world which deserves to be recognized, but one may be unsure about granting particular land claims.³

In this study, then, I am primarily interested in seeing which theory can accommodate the cultural basis of Aboriginal peoples' demands for

² Joseph Carens (1992), James Tully (1995), and Bhikhu Parekh (2000) also hold different versions of this thesis.

³ Of course, I acknowledge that, in practice, the two demands are intricately linked and both are required for self-determination. Respect for Aboriginal views of the land is insignificant if settler societies are not prepared to give back territory that Aboriginal peoples once had stewardship over. My distinction here is only meant to serve an analytic function. While it may be clear that a demand simply for land can be accommodated by a liberal theory of distributive justice (as a matter of group equality or compensation), this is not the case with the cultural demand. In other words, while a view may be able to restore some land back to Aboriginal communities, it can still be rather hostile to Aboriginal peoples request that they have the power to organize themselves according to their traditional cultural views of the land. It is these cultural views that present the critical challenge for a theory about multi-"*culturalism*." This is why I make such a distinction.

land: their distinct traditional self-understandings and spiritual relationship to the land. As RCAP researchers note, such recognition is of critical concern with respect to land disputes.

But why have I chosen to look at Aboriginal views of the land as an example? Why not female genital mutilation? Views of the land are an excellent example for the following reasons: First, they constitute an integral aspect of Aboriginal cultural identity (according to Aboriginal people themselves) and thus present the minimum one could expect a theory of multicultural diversity to accommodate and recognize. I am not talking about views and practices that involve maiming or torturing. This example avoids the tendency to set up the differences between liberal and non-Western societies in terms of extreme practices which are themselves internally contested in order to show the "real" stake between "us" and "them."

Second, these views are sufficiently different from liberal ones: (i) Most importantly, for many Aboriginal peoples, their concept of the land and their relationship to it are defined in spiritual or religious terms and not in secular and instrumental terms. (ii) As a direct consequence of these religious views, the very idea that land should be thought of as property, in the sense of an alienable commodity, is problematic. These views are in tension with the very idea of ownership itself (whether exclusively and privately or in common).

Third, this issue is of paramount importance. Almost all battles between Aboriginal peoples around the world and larger societies involve land issues. Canada is no exception.

Moreover, let me note that I am not claiming that all Aboriginal peoples of North America share the same traditional views of the land, which are closed, homogenous, unchanging and so on. Nevertheless, there are certain distinct pervasive ideas about the land that continue to flourish in Aboriginal communities or certain family resemblances among these views. For the purposes of this analysis, I am specifically concerned with these distinct traditional views of the land, since it is these that present a challenge for an approach to multiculturalism. In addition, I am not claiming that Aboriginal peoples do not use Western concepts of property or that they should not be allowed to do so, or any absurdity of the sort. Along with RCAP researchers, I imagine a three way system regarding land in Canada: Aboriginal majority views ought to be sovereign on land held by them; liberal views may be sovereign on land that is owned by the Crown; and, both Aboriginal and non-Aboriginal views ought to be regarded as on equal footing on land that is held jointly or in dispute.

I. Aboriginal Views of Land and Property

The concept of land covers a wide range of phenomena in Aboriginal cultures. It not only includes the surface of the earth, but also the subsurface, lakes, ice, the marine environment, as well as the air. Land in this wide sense refers to the whole of the earth's environment and its life support system. It includes what ecologists call the earth's biosphere (RCAP, 449). Many Aboriginal peoples explain that land (in this sense) is absolutely integral to their identity. It defines their sense of self. For example, in her paper *Iyani: It Goes This Way*, Paula Gunn Allen explains that:

We are the land. To the best of my understanding, that is the fundamental idea embodied in Native American life and cultures. . . . More than remembered, the earth is the mind of the people as we are the mind of the earth. The land is not really the place (separate from ourselves) where we act out the drama of our isolate destinies. It is not a means of survival, a setting for our affairs, a resource on which we draw in order to keep our own act functioning. It is not the ever-present 'Other' which supplies us with a sense of 'I'. It is rather a part of our being, dynamic, significant, real. It is ourselves, in as real a sense as such notion as 'ego,' 'libido' or social network, in a sense more real than any conceptualization or abstraction about the nature of human being can ever be. The land is not an image in our eyes but rather it is as truly an integral aspect of our being as we are of its being. . . . Nor is this relationship one of mere 'affinity' for the earth. It is not a matter of being 'close to nature.' The relation is more one of identity, in the mathematical sense, than of affinity. The Earth is, in a very real sense, the same as ourself (or selves). (191).

The crucial importance of land is widely shared amongst many Aboriginal peoples. Elder Alex Skead in *Winnipeg* similarly remarks that "this is my body when you see this mother earth" (RCAP, 435). Oren Lyons also describes the relationship between oneself and the land in terms of the relationship between mother and child: "without this earth, without your mother, you could not be sitting here" (173). Turpel argues that the main ethical principles in Aboriginal communities are derived from their spiritual relationship and responsibility for "Mother Earth" (29). Henderson explains that land defines and has "always" defined Aboriginal "identity, their spiritual ecology, their reality" (293). Little Bear et al., contend the reason that Aboriginal peoples demand self-determination is

that they demand the power to define and reestablish their "spiritual" relationship to the environment. Taiaiake Alfred argues that "responsibility to all of creation" is among the traditional values for which his community demands self-determination (22; see also 61-62).

In many instances, the sources of these views about agency and its relationship with the land can be traced to pervasive spiritual and metaphysical ideas about the interconnectedness of all forms of life. According to many of these ideas, there is an underlying vital force that animates all being. For example, in Sioux communities, this force is denoted by the concept of Wakan. In Algonquian communities, this is denoted by the notion of Manitou. Human beings and nature are not divided as in most Western perspectives but are seen to be in ultimate unity. Humankind's destiny is not to master, control and dominate nature but rather, as Raymond J. Demallie explains in his study of the Lakota Aboriginal culture, humankind and nature are perceived as one; the world is characterized by its unity. Humankind is thought to have been created within the womb of mother earth, as are the animals. Wakan is the animating force of the universe, its underlying oneness (27-28).

Gunn Allen also discusses the interconnectedness and unity underlying the circle of life. She explains that "it is within this larger being that we are given life, and in the acknowledgement of the singleness of that being that we eat, that we plant, that we harvest, that we build and clean, that we dance, that we hunt, run, heal, sing, chant and write" (191). See additionally Henderson for a description of the Mikmak concept of Mntu (Manitou) (226).

I am not claiming that all Aboriginal peoples of North America share the same traditional worldviews. Nevertheless, there are still certain distinct and pervasive resemblances among specific ideas that continue to flourish in many of these communities. Land as an intimate aspect of one's being happens to be one of these. This fact has been noted by Aboriginal and non-Aboriginal scholars alike (on this point see below, and also: RCAP, 448-458, 425; Alfred, 110-111; Turpel, 29; Henderson, 217).

Given the intimate spiritual relationship between the self and land for many Aboriginals, it is not difficult to understand why the very idea of owning land (whether it is privately and exclusively or in common) would be rather offensive from the perspective of those who define their relationship to the land in such non-secular terms or perceive it as their "mother." Can you own your mother or child and put a price on her head (whether privately or in common)? Indeed, slavery is so offensive because it relies on the idea that human beings can be thought of as a

commodity that can simply be bought and sold. Many Aboriginal peoples think and feel the same way about Mother Earth. As Henderson argues, the "sacred order was never viewed as a commodity that could be bought, only shared" (231) and to "speak of modern [Western] legal notions of 'ownership' and 'property' rights in the context of Aboriginal languages or worldview is very difficult, if not impossible" (217).⁴

In his study of traditional Iroquois land use, William A. Starna notes that for the Iroquoians also, land is not thought of as real estate or property, personal or public. It is not owned by anyone, whether an individual or groups of individuals. These communities historically operated in terms of a "use-right" relationship. Land is allocated in terms of an "usufructuary privilege." That is, individuals or groups are entitled to use and extract resources from within a given territory, but there is no direct ownership. Instead, land is held communally and benefits and burdens are shared by all in the community (39). Natives often describe this relationship in spiritual or religious terms about stewardship and sharing. Land tenure brings with it the great responsibility to take care of Mother Earth. It is grounded in sharing Mother Earth with "animals, ecosystems, and spirits that co-inhabit their territory" (Tully 1994, 164). Although one may speak of Aboriginal "property" systems in this sense of tenure and stewardship, these systems differ from most other views in that land is conceived of as spiritually significant and is thus not simply seen in instrumental terms as an alienable commodity (see also Alfred, 60-61; Turpel, 29; RCAP, 458-459).

Despite years of forced assimilation of every kind, many of these traditional understandings are still alive today. Indeed, many Aboriginal people make their arguments against the federal government on the basis that their ancestors never gave up their spiritual relationship to the land but only agreed to share it with the European settlers, for this relationship cannot be given up nor can you own Mother Earth. As Grand Chief Harold Turner argues:

The Creator gave us life, inherent rights and laws which governed our relationship with nations and all peoples in the spirit of coexistence. This continues to this day. We as original caretakers, not owners of this great country now called Canada, never gave up our rights to govern

⁴ In addition, as Jennifer Schirmer (1988) notes, this also applies to food in certain Aboriginal communities: "In some Plains Indian languages, the possessive pronoun is not used with such words as 'bread'; that is, it is inconceivable to these groups that anyone should consider food as something for his or her own private consumption" (92).

ourselves and thus are sovereign nations. We, as sovereign nations and caretakers of Mother Earth, have a special relationship with the land. Our responsibilities are the foundation of our spirituality, culture and traditions. . . . Our ancestors did not sign a real estate deal, as you cannot give away something you do not own. (RCAP, 436).⁵

These views are in deep tension with, among other things, the possessive ethos of liberal capitalist societies, where the individual is seen as an "infinite consumer and infinite appropriator," with an insatiable desire for material goods, as C.B. Macpherson might have put it. Indeed, Alfred contends that the reason Aboriginal peoples demand self-determination is that their "traditional spiritual values" and modes of social organization deeply conflict with the "secularism" and "possessive materialism" of Western liberalism and free-market capitalism. Here, again, the "spiritual connection" to the land and its direct consequence for owning land is at the root of the conflict (60-61).

Many Aboriginal people argue that the destruction of this spiritual relationship with the land has contributed to a loss of identity and meaning. As Chief Bernard Ominayak of the Lubicon Cree explains: "As the land base was disrupted human lives shattered because the relationship with the land was broken. This meant a loss of linkage to the past, to the spirit world, to ancestors, to identity and to affirmation of the self. . . . the rhythm of life was broken and we began to see the results: people became depressed, they drank, they abandoned themselves, they had no context, status, dignity, identity" (Turpel, 35; see also RCAP, 442).

After hundreds of years of subjugation, with as many years of resistance, Aboriginal peoples are still struggling for the power to determine the lives of their communities in the manner they see fit. The conflict between the First Nations and Canada is not simply about demanding land that was taken from them; it is deeper than this. They seek that to which any peoples are justly entitled: to be able to promote and live by their distinct self-understandings, something which the dominant culture has taken away. As Turpel and others continually emphasize, Aboriginal peoples demand self-determination because they seek self-definition. An integral aspect of this demand involves, *inter alia*, being able to promote some of their traditional self-understandings in their

⁵ Chief George Desjarlais similarly argues: "We agreed to share our lands and territories with the Crown. We did not sell or give up our rights to our land and territories. We agreed to share our custodial responsibility for the land with the Crown" (RCAP, 437).

institutions. It involves being able to freely promote these in their governing institutions and being free to teach their children, in their public educational systems, about their spiritual relationship to the land, without fear from the Western liberal majority that Aboriginal nations are somehow planning to violate basic human rights.

Now I call the question: Which of the three positions I mentioned will best allow these communities to promote these traditional spiritual self-understandings regarding the land and best accommodate their demand for self-determination? Again, let me point out, I am interested in seeing which theory can accommodate the distinct cultural basis of Aboriginal peoples' demands for land: their traditional self-understandings and spiritual relationship to the land. I am not asking which position can accommodate their demand for land, but, their views of the land. These views are critically at stake in terms of cultural survival and present the minimum one could expect a theory of multiculturalism to accommodate and recognize.

II. Liberal Political Theories of Multicultural Diversity

2.1 Culture as a Private Matter in a Liberal Society

Jeremy Waldron notes that many "ethnic communities" demand some form of cultural recognition. Sometimes they ask for special political representation, and, in some cases, a degree of self-rule. They often request state assistance to maintain their cultures and ways of life. But, Waldron asks, why should liberal society at large be required to oblige? Why not let these communities disintegrate? Many people live in a "kaleidoscope of cultures" and are successfully able to switch from one to another, so why shouldn't all ethnic groups be required to do so? The fact that such a transition is possible (and fulfilling), shows that belonging to a specific culture, while being "something that particular people like and enjoy," should not be thought of as a need. Therefore, Waldron argues, cultural membership is not (and ought not to be) relevant to the political domain. "At best," it is on par with religious affiliation and is a private matter (1992a, 762). Any demands made on the basis of ethnic or cultural affiliation have no weight as far as the liberal state is concerned; the most one could demand on this basis is non-interference.

There are many problems with this view; let me discuss two. First, the transition from one culture to another is not nearly as simple or easy as

Waldron claims it to be. In fact it can be tremendously difficult. In cases where social structures vary widely enough, it can even be traumatic. This has been frequently documented with regard to the experiences of Aboriginal peoples around the globe. Sociologists and psychologists explain such experiences by noting that cultural membership is intimately related to a person's sense of identity and well-being. It provides a frame of reference and meaning. A loss of such a structure can therefore have profound and devastating consequences for an individual's sense of self and orientation. As such, cultural membership is an important aspect of any person's interests that cannot be left to the "private domain," on par with other "hobbies" and personal preferences that "people enjoy," but have no claim to be needs. And even though it may be possible to "move" from one culture to another, this does not mean that a society can justly require this of all its members, especially given that most individuals resist such assimilation and given that this move can have long range damaging effects on their lives.

Second, there is an inherent inconsistency with any theoretical position of this kind. The very idea that you can distinguish between the "private" and the "public" or the "religious" and the "political" (and that you ought to do so) and then allocate the cultural to the private domain is itself a culturally embedded view that privileges Western communities and modes of social organization. This idea is not somehow "neutral" or "natural" or "transcendent" or universally shared or anything of the sort. It is integral to Western liberalism and not found in other traditions of thought. Most Aboriginal communities are not organized around such values and distinctions, nor do they desire to be. As Lyons argues "the separation between spiritual, religious ways from political ways does not exist within the structure of Ho-de-no-sau-ne, and also I might add, to most other Indian nations" (173; see also Alfred, 41-44). In fact, the reason that many First Nations want collective rights is so that they do not have to organize themselves along these lines.⁶

⁶ As Alfred argues: "The dominant Western conception of justice is rooted in a fundamentally individualistic, materialistic ideal of equity or sameness. By contrast, indigenous notions of justice arose within the context of belief in a universal relationship among all the elements that make up our universe. Native ideas center on the imperative of respectful, balanced coexistence among all human, animal, and spirit beings, together with the earth. Justice is seen as a perpetual process of maintaining that crucial balance and demonstrating true respect for the power and dignity of each part of the circle of interdependency. . . . Consider the intimate relationship between politics, morality, and economies. Whereas Western concepts of justice treat these separately, in indigenous societies right and wrong is determined by the broad effect of a specific action on all

So while cultural membership supposedly should not matter to politics, it certainly does matter if you happen to be a part of a Western liberal culture. The supposedly culture-free or "culturally-transcendent" liberal "cosmopolitanist" state not only supports but legitimizes certain Western modes of social organization, while arbitrarily disadvantaging others. While cultural minorities are required to abstract away from their cultural self-understandings, Waldron's liberal cosmopolitanists are unfairly allowed to retain their own without any cost. They get for free what others must now pay for on their own. Theories of cultural diversity that attempt to bypass cultural membership do not work for the simple reason that principles of social organization are always culturally mediated. The supposedly neutral, universal, or as in Waldron's particular case, "culturally-transcendent" and "more authentic," principles offered on such theories always turn out to privilege some cultures at the cost of others.

This is not to say that there are no cross-cultural values (e.g., compassion, care) but only that these do not necessarily encompass liberal political principles of social organization (e.g., the extraction of the religious from the political or liberal definitions of the basic unit of moral and political consideration). Moreover, even where values are cross-culturally shared, they are always culturally mediated. This is why dialogue is so critical in a multicultural environment and why one cannot assume that one's principles of social organization are a basic given and accept others to uncritically adopt these.

What about traditional views of the land that Aboriginal peoples desire to promote in their communities and for which they seek recognition then? It almost goes without saying that if one were to adopt any form of this liberal position, one could in no way accommodate these demands, much less provide any sort of public recognition for such traditional views. The first and fatal decision would be based on the principled consideration that since this demand is about cultural survival,

elements of the universe. Justice consists in maintaining the state of harmonious coexistence that is the goal of all political, spiritual, and economic activity. . . . Justice is the achievement of balance in all these relationships, and the demonstration in both thought and action of respect for the dignity of each element in the circle of interdependency that forms our universe. . . . Thus the philosophical premises underpinning indigenous notions of justice and power differ radically from those that support most Western formulations. Acknowledging the existence of power in all elements that make up the universe, indigenous philosophies teach us to respect and accommodate that power in all its varied forms" (42-44).

it is simply not relevant to issues of justice or politics. The liberal state is under no obligation, in principle, to provide any funds for any such goal.

But the state will have to operate on some views of the land, will it not? Some account will have to inform its legal mechanisms in order to resolve conflicts or other matters having to do with the transfer or allocation of land within Aboriginal communities. Since particular cultural views are not relevant to the political domain, and since liberal concepts are taken to be culturally-transcendent or culture-free on Waldron's view, these mechanisms would be informed by alien Western liberal understandings.

If one were to adopt Waldron's position then, the Canadian Federal government could simply impose an alien legal system of property on Aboriginal communities, the majority of whom view their relationship with Mother Earth as deeply spiritual and constitutive of their identity. And again, while Aboriginal minorities would be required to abstract away from their cultural self-understandings, liberal cosmopolitanists would be unfairly allowed to retain their own views without any cost, under the guise of culture-free or more "authentic." This is in fact what the Canadian government has done for years. Indeed, most current negotiations in Canada concerning land disputes continue to operate in this mode. Negotiators almost always assume the sovereignty of Western self-understandings of the land, which are simply taken for granted as somehow given or natural and universal (RCAP, 439, 456). Waldron's position provides a further theoretical justification for these policies (albeit a flawed one).

But such an outcome is unjust. Aboriginal nations are sovereign. They have their own understandings of land tenure and are entitled to organize themselves around these. There is no reason why these communities ought to abide by any such policies or any such alien legal system.⁷ This view perpetuates a form of extreme historical injustice against Aboriginal peoples by assuming that Western liberal views are supposedly culturally-transcendent or culture-free and ought thus to be universalized.

In sum then, such a position cannot, in principle, accommodate Aboriginal self-understandings in any regard. In fact, it can only lead to the further colonial subjugation of Aboriginal peoples in Canada.

⁷ Henderson contends that "decolonizing Canadian law requires a new analysis of property law and Aboriginal title precedents. It requires an understanding of the false superiority of colonial legal thought that is built into existing precedents. . . . It cannot be assumed that British law automatically applies to North America" (291).

2.2 Culture as an Instrumental Good for a Liberal Society

Will Kymlicka's theory intends to be a response to "the challenge of multiculturalism" from a Western liberal perspective (1995, 2, 9). He is specifically interested in how liberal theorists should respond to non-Western "national groups and ethnic minorities." It is noted that the demands of these groups "raise a deep challenge to all Western political traditions" (130) but that such traditions have "been surprisingly silent on these issues." In fact, "Western political theorists" have worked with "an idealized model of the polis in which fellow citizens share a common descent, language, and culture" (2). In particular, Kymlicka is concerned with the Aboriginal peoples of Canada. He desires to emulate a "treaty ideal," which requires that nations "treat each other as equals and respect each other's right to speak for and govern themselves" (vii) and that relations be "determined by dialogue" (171).

Kymlicka argues that the distinct reason that Western liberals should be concerned with cultural membership is that it provides the social basis for the development of individual autonomy, which is supposed to be liberalism's prime value. While he also notes that cultural membership is integral to a person's well-being, evidently, liberals can only accommodate this relationship "in so far as" collective rights support individual freedom. On this view then, the concern for culture is filtered through or mediated by the overriding value of individual autonomy. The value of cultural membership in a liberal society is therefore, in effect, of instrumental worth to the reproduction of autonomy (2001, 53, 59-60, 208-209; 1995, 80-84, 87-89, 75, 101; 1989, 162-167; 177, 197, 253).⁸

⁸ Nor does Kymlicka broaden the liberal normative base for the concern for cultural membership beyond individual autonomy in *Finding Our Way* (1998). Although this work is not primarily intended to be a theoretical investigation of cultural diversity from the perspective of liberal theory, some of these issues could have been addressed in his discussion of the similarities and differences between Aboriginals' and Quebecker's demands for sovereignty. Yet his specific discussion of the Aboriginal case is brief (two pages 144-146) and he says that the Aboriginal case is more "complicated" than the Quebec case. But the reasons he gives for why the Aboriginal case is more complicated leave out the crucial complication from a liberal perspective. Aboriginal peoples of Canada may not share Western liberal self-understandings or "promote liberal values," whereas Quebec shares in Canada's wider liberal culture. He acknowledges that "the extent to which these values are shared among Aboriginal peoples varies from group to group and is a separate issue" (151). But he does not discuss this separate issue anywhere in this text. In addition, there are no changes to this argument in his most recent collection, *Politics in the Vernacular*, see e.g., (2001, 53, 59-60, 208-209).

There is a serious problem with this view. If the main reason that liberals ought to be concerned with "societal" cultures is that they make possible individual autonomy, then, ipso facto, this would exclude some of the key interests of the Aboriginal communities with which Kymlicka is himself most concerned. These non-liberal groups may not provide the "sort of" cultural context that makes possible individual choice in significant respects. Some of the shared ideals that these groups desire to organize themselves around are not thought of as matters of choice. This is certainly true of their views regarding their relationship to the land. These self-understandings however are a defining feature of their cultural identity. They are an integral aspect of these peoples' very concepts of the individual and human flourishing.⁹ The crucial reason that these groups desire collective rights is so that they are able to promote some of these distinct views in their governing institutions and have them survive.

Kymlicka's theory cannot accommodate these demands. If the Kymlickian liberal is (and ought to be) concerned with culture in so far as it enables each person in a community to choose and revise her own conception of the good life, then, in this regard, in promoting these traditional views any such community may be thought to infringe on one's individual autonomy.

Let me spell this out. If cultural membership matters to me because it allows me to choose whichever conception of the good that I want, then an Aboriginal community would infringe on my personal and private freedom by promoting within their public and governing institutions deeply religious views regarding their relationship to Mother Earth. As a liberal convinced by Kymlicka's arguments founded on autonomy, why should I accommodate any such demands when the whole point of Kymlicka's arguments was to show how access to a cultural structure contributes to the individual autonomy of each member in a community, not diminishes it? As a liberal I understand that "societal cultures are important to people's freedom, and that liberals should therefore take an interest in the viability of societal cultures" (1995, 80). I understand that "failure to recognize these [collective] rights will create new tragic cases of groups which are denied the sort of cultural context of

⁹ The individual freedom to buy or sell land may be rather offensive from the perspective of those who define it as an intimate aspect of the self or define it as their "mother." Land is not something you can just choose to buy or sell, but constitutes the sort of thing, the individual, that buys and sells in the first place. For many Aboriginal peoples, one is as "free" to sell the land as one is free to sell one's right arm or people's lives. As a Blackfoot Chief puts it, "we cannot sell the lives of men and animals; therefore we cannot sell this land" (Henderson, 218).

choice that supports individual autonomy," not simply any cultural context (101). Cultural membership is important to me because individual freedom is important to me. It is therefore that I am concerned with it.

Hence, if Kymlicka is right that liberalism is and ought to be defined by a commitment to individual autonomy as the core value, and if Kymlicka is right that liberals ought to be concerned with cultural membership in so far as it contributes to the individual autonomy of each member in a community, then I see no reason, at least in principle, why Kymlickian liberals ought to accommodate Aboriginal peoples' demands. This account is constructed in a manner that includes the interests of mostly Western liberal groups, since they provide the required social basis for the development of autonomy. Kymlicka's theory does not meet the challenge of multiculturalism or multinationalism and thus fails by its own standards.¹⁰

¹⁰ In Kymlicka's defence, one might argue that he requires less than I have made out. The only prerequisite for collective rights is that a group not restrict its members' basic civil and political rights, and that it allow for dissent. Even if Aboriginal groups desire to promote certain shared ideals that they do not perceive as matters of individual choice (e.g., views of the land), they may be granted rights as long as they converge on human rights norms and permit dissent. If this is indeed Kymlicka's view, then he faces a critical problem. To the extent he that adopts this position, he departs from his principled argument that culture is important because it provides the social basis for the *development* of individual autonomy. He accepts that liberals should accommodate and acknowledge that a community may legitimately aspire towards certain shared substantive ideals that may not be considered matters of choice but which are central to its cultural identity. He is now offering a justification of collective rights not on the basis of autonomy but more along the lines of tolerance: Even if non-liberal groups do not provide a context for the development of individual choice in significant respects, tolerance requires that they be accommodated as long as their views are compatible with the underlying principles of a human rights ethic and they permit dissent. But if the point of Kymlicka's account is to make cultural rights acceptable to those liberals committed to autonomy as the core value of liberalism, then I do not see why they ought to accept this appeal to tolerance. Even if a community permits its members to reject traditional views and even if these are compatible with fundamental norms, in promoting shared substantive ideals they are *still* limiting members' individual freedom and this was the distinctly liberal reason to be concerned with cultural membership in the first place. Indeed, Kymlicka's own defence of cultural rights would appeal *more* to an ethic of tolerance than to individual autonomy with regard to the non-liberal communities he is most concerned with. If he does indeed intend to support such a view, he must abandon his commitment to individual autonomy as *the* core value of liberalism, or at least the distinct principled reason that liberals ought to be concerned with cultural membership. But he is unwilling to do either. In fact, autonomy occupies such a crucial position in his defence of cultural rights that he objects to any theory of diversity not premised on the foundational status ascribed to it (1995, 154-163). For example, he attacks Rawls' recent

But, as Kymlicka in fact argues, he is not claiming that only "purely" liberal nations should be respected, this would be completely "ludicrous." "Liberality" is a matter of degree and no culture is completely "liberalized" or "reformed" as yet. Indeed, he argues that even though Aboriginal cultures may not provide the sorts of social contexts that enable individual autonomy, this does not mean they cannot be liberalized and reformed to do so. It is "ahistorical" to think otherwise; "it is important to remember that existing liberal nations were all once quite illiberal" (1995, 235, 171; 94; 1989, 180). And what does liberalization require for Kymlicka? Among other things, he links it to modernization, which involves becoming "more like" other Western liberal cultures in terms of "basic moral" and "political values." This means becoming more individualistic and secular (87-89). For, "as cultures liberalize, people share less and less with their fellow members of the national group, in terms of traditional customs or conceptions of the good life, and become more like members of other [liberal] nations, in terms of sharing a common [Western] civilization" (88).

The First Peoples of Canada can thus be seen to be progressing in degrees beyond their non-liberal/illiberal religious ways of life and becoming more like secular Western liberal nations (104). They can be seen, by liberals, as on the historical and moral path of Western liberal progress, in virtue of which Canadians may now grant them collective rights.

Such a view cannot accommodate Aboriginal demands in Canada. As Alfred, Turpel, Little Bear et. al., Henderson, RCAP researchers, and others have argued, Aboriginal communities do not desire to progress beyond their spiritual views of the land, so that they can become more like Western liberal nations. They do not desire to be "reformed" or "liberalized" nor should they be required to do so. In fact, the reason they want collective rights is so that they do not have to organize themselves according to individualistic and secular ways of life. Kymlicka's views about reforming and liberalizing Aboriginal and other non-liberal nations

attempts to distance "himself from a commitment to individual autonomy" (158) and opposes Kukathas' liberal theory because it "downplays" autonomy (154); both rely more on the value of tolerance. Indeed, Kymlicka makes the incredible claim that liberal tolerance itself has historically really been a concern for individual autonomy all along: "what distinguishes liberal tolerance is precisely its commitment to individual autonomy" (158). (I cannot examine the accuracy of such a claim here, but even if it were true, would this restrict liberals here and now to such a limited interpretation of tolerance? This is not withstanding that prominent liberals, such as Rawls, don't abide by any such view).

neither fosters dialogue nor treats these communities as equals or with respect. This does not emulate a treaty ideal.

Indeed, Kymlicka's view of the relationship between liberal and non-liberal cultures actually inhibits dialogue. He makes no distinction in kind between "non-liberal" and "illiberal" or oppressive cultures (aspects thereof) and uses these interchangeably (e.g., see 1995, 154, 155, 158, 164-165). This puts communities that are non-liberal, i.e., may be organized around more communal or religious ways of life, in the same conceptual category as those that are illiberal or oppressive.

But I do not see why communities that may be organized around more communal or religious ways of life should be put in the same conceptual category as those that are oppressive—from the perspective of ideal theory I mean—even if we nuance this with the notion that these non-liberal groups are oppressive only in varying degrees. Is it not possible that a society may be organized around "shared ideals" without being considered, at least to some degree, illiberal and oppressive, or yet to be fully liberalized? Is it not possible that a non-liberal culture might be considered an acceptable form of social organization, without thinking that it is acceptable to the degree that it is on its way to being "reformed"? Is it not possible that certain liberal tenets might be considered oppressive in virtue of some of the perspectives that these societies might have to offer, in accordance with worldviews, e.g., the moral standing and treatment of animals or the environment (see Parekh 2000, 110)?

The manner in which Kymlicka conceptualizes the relationship between groups makes these possibilities difficult to conceive, as it is non-liberal nations that are in varying degrees illiberal, or, yet to be fully "liberalized." A fully liberal nation, in theory, is at the just end of the moral and political spectrum. This conceptualization does not handle Aboriginal self-understandings with equal respect and implies that liberal views represent the authoritative standard that others must reform to in order to be thought of as acceptable. This is particularly problematic in the context of a multicultural society with a colonial history, where Aboriginal peoples have historically resisted and continue to resist such reformation.

2.2.1 Kymlicka's Discussion of Aboriginal Peoples and Land

Let me now examine what Kymlicka does say about Aboriginal peoples and land. In fact, his discussion of this issue has simply to do with the demand for land. It certainly cannot be said to accommodate Aboriginal peoples' demand that they have the power to promote their

traditional views of the land in their institutions.

The argument he offers is similar to those for affirmative action and equality between groups. Cultural membership is a primary good because it is crucial to the development of individual autonomy. Since Aboriginal peoples are arbitrarily disadvantaged with respect to this good, the Canadian state ought to, as a matter of equality, provide these groups with collective rights. Aboriginal peoples may thus receive a land base as this is needed to secure (and to the degree they in fact secure) the sort of cultural context that supports individual autonomy (2001, 146-147; 1995, 108-110; 220; 43; 1989, 187). This might require that certain liberties of non-Aboriginals (e.g., voting rights on Aboriginal land) be temporarily restricted to provide "external" protections.

The critical problem with this argument, as I have already pointed out, is that since Aboriginal peoples do not provide such a societal context in significant respects, there is little reason for liberals to provide them with land in the first place. Ignoring that critical fact, secondly, there is no principled reason on this argument for liberals to accommodate Aboriginal peoples' demand that they have the power to promote their traditional spiritual views of the land, or that, for example, they be able to promote such self-understandings in their educational systems. Furthermore, there is nothing, in principle, stopping liberals from requiring Aboriginal communities to abide by Western liberal property laws.

Kymlicka does, however, attempt to provide a "practical" basis which would allow Aboriginal peoples to "own" land in common. He argues that "history has shown that the most effective way" to protect indigenous communities' land holdings from majority exploitation "is to establish reserves where the land is held in common and/or in trust, and cannot be alienated without consent of the community as a whole" (1995, 43). This is because one of the most common methods that wealthier majorities have used to appropriate Aboriginal land has been to replace Aboriginal systems with individual ownership. The wealthier majorities then purchase it from Aboriginal individuals who are poor. But moreover, Kymlicka notes, this practical strategy of allotting land in common is also "consistent with" Aboriginal traditional views regarding "communal ownership" (43).

This is not even close to recognizing the demand that Aboriginal peoples be granted the power to promote their traditional spiritual views of the land in their governing institutions. It makes no attempt to understand the underlying importance of these views for Aboriginal peoples or to accommodate this importance in any manner whatsoever.

The problem with Kymlicka's argument here becomes apparent

when one considers what would happen when Aboriginal peoples are no longer disadvantaged. Affirmative action plans are only a temporary measure until their beneficiaries are on an equal par with majority groups.¹¹ Since communal land is provided on the basis of cultural affirmative action plans, what other independent basis will liberals then have for accommodating or respecting Aboriginal peoples' demand that they have the power to endorse their spiritual views of the land or "communal ownership" in their communities when these societies are no longer disadvantaged? Liberals will hardly have any such basis, given that the main reason they should value cultural membership in the first place is individual autonomy. Again, the political endorsement of such religious views constitutes an infringement of individual freedom (an "internal" restriction in Kymlicka's language) and there is little reason that liberals would be required to tolerate this infringement, much less accommodate and politically affirm such an endorsement as legitimate, given their key motivation for being concerned with cultural membership.

All of this is apart from the more exigent demand that, as an ideal, one should be open to acknowledging and appreciating other's particular views themselves. This means that not only is one open to accepting as legitimate the demand of Aboriginal peoples to promote their own views in their communities, but furthermore, one is open to a sympathetic understanding and appreciation of such views themselves. As the Royal Commissioners argue, based on their hearings with Aboriginal groups, land claims are not simply about giving back some land but also, in a critical sense, about respect and recognition for cultural differences. Such respect and recognition is especially important in the context of a colonial history where Aboriginal ways of life have been, and continuously are, demeaned and degraded. These disputes will never be wholly resolved unless dialogue and negotiations are "guided by one of the fundamental insights from our hearings: that is, to Aboriginal peoples, land is not just a commodity; it is an inextricable part of Aboriginal identity, deeply rooted in moral and spiritual values" (RCAP, 430). For, land permeates the "language, culture and spiritual values of all Aboriginal peoples" (425).

¹¹ As Kymlicka states: "One could imagine a point where the amount of land reserved for indigenous peoples would not be necessary to provide reasonable external protections, but would rather simply provide unequal opportunities. Justice would then require that the holdings of indigenous peoples be subject to the same redistributive taxation as the wealth of other advantaged groups" (1995, 110; see also 2001, 150).

2.3 Culture as an Integral and Independent Good for a Liberal Society

In Canada, Charles Taylor argues, we face a challenge to "our very conception of diversity" at a fundamental level. Many people who rejected Meech Lake, for example, accept cultural diversity in a "first level" sense: There are a variety of cultural differences and outlooks in our population, but we still share "the same idea of what it is to belong to Canada." This manner of belonging is uniform, whatever other differences there may be. But this uniform sense of belonging does not accommodate all Canadians. For Quebeckers and Aboriginal peoples, their way of being Canadian is by belonging to a historical community in Canada.

For example, someone of Pakistani origin in Toronto may see herself as a Canadian with certain rights in a multicultural mosaic. Although her cultural background may certainly be crucial to her identity, her sense of belonging to Canada would not pass through some other historical community in the same way as it would for a Quebecker or a Cree. For these groups, Canada is a federation of groups, each of whom has a right to live according to their own traditions. Their sense of belonging is mediated through a distinct historic community and a constituent element of Canada. "To build a country for everyone," Taylor argues, we would therefore have to allow for a second-level or "deep diversity," in which we accept a plurality of ways of belonging. We accept not only cultural diversity but a number of possible ways in which these groups may belong to the larger community (1993, 81-82; see also 27; 198-199). Along these lines, Taylor provides a theoretical framework that attempts to respond to such deep diversity in Canada.

On the basis of Quebec as a model, Taylor argues that liberal society need not be singly defined by a commitment to individual autonomy or neutrality as the prime or overriding values, although these are important. Rather, such a society can be (and in fact is) based on a plurality of goods. Since there is an intimate relationship between cultural membership and an individual's well-being, because it is indispensable to our being full human subjects, Taylor argues that such membership ought to be considered an integral value for a liberal society. Furthermore, he acknowledges that the pursuit of cultural survival may involve the pursuit of more "communal" ends, as seen from an American liberal perspective. But, like Quebec, a society can still be liberal and endorse cultural goals or communal ends provided that it can secure for its members fundamental

rights, especially for those who do not share in these views, and provided that it respects those who dissent from these goals.

The recognition of cultural identity is thus a legitimate independent good which the liberal state allows within the bounds of fundamental rights. Cultural survival and shared substantive values or ends are matters of legitimate consideration in judicial review or for the purposes of public policy, as long as they are within the limits of human rights. Cultural membership is not simply instrumental in providing the social basis for an individualistic society. Since the concern for cultural diversity derives directly from its relation to human well-being, any cultural group is *prima facie* a possible candidate for cultural rights, even if it is not as individualistic as a Western liberal culture. Hence, Taylor's account will not exclude cultures that may revolve around "substantive" conceptions of the good life or non-liberal groups and will be more open to a dialogue with these others. In this view, liberals would have no principled difficulty getting to the negotiating table, even with prior knowledge that these communities may be organized quite differently (1999a, 133-140; 1995b, 186-187; 1995e, 250; 1994, 25-26, 59-60; 1993, 53-54).

By adopting Taylor's position, one would be open to accommodating Aboriginal self-understandings of the land. This possibility is fully available on his position, even if these views are defined in spiritual terms and not in secular and instrumental ones, even if they are in opposition to the very idea of treating land as a commodity, less individualistic from a liberal perspective and so on. Tensions of this sort are expected and require a liberal society to balance between different goods. Since cultural membership is an important good that impacts intimately on Aboriginal peoples' well-being, and given a serious attempt to understand Aboriginal views of the land, the liberal would have good reasons for accommodating these demands. And, certainly, Aboriginal communities are not demanding the power to trespass basic human rights norms and they do allow for dissent.¹²

¹² Is Taylor's insistence on human rights norms really any different than Kymlicka's requirement that a group not be allowed "internal restrictions" (i.e., that it not be allowed to limit the individual freedom of each member to choose and revise her own conception of the good)? A key difference is as follows. On Taylor's view, one can unproblematically acknowledge that human rights norms may be justified from the perspective of differing shared conceptions of human flourishing that may be integral to a non-liberal peoples' identity and which they may legitimately seek to promote in their governing institutions (without implicit plans for liberalization, secularization, or reform). For example, respect for life, bodily integrity, gender equality, etc., can be equally as well justified on the basis of Aboriginal spiritual ideals as they can on liberal secular ones. But

In reality, goods come into conflict in a society all the time, as for example, individual freedom and equality. There is no reason to think that it will be any different with the good of cultural membership. Such tensions can only be resolved through actual public deliberation and dialogue on the particular issues involved: "liberal politics has to be concerned with the conditions of genuinely democratic decision making. . . the public sphere must not be seen as a social form limiting the political, but as itself a medium of democratic politics" (1995d, 287). In fact and in principle, there is no other just manner in which to resolve such conflicts but through public deliberation of the particular issues involved, especially in a multicultural environment where basic concepts may not be shared.

But the demand for cultural recognition is not always just a demand that others acknowledge the pursuit of cultural identity-in-general as a legitimate goal, or that shared ends be allowed as legitimate considerations in public policy. Sometimes, these groups further request that we recognize and respect aspects of their particular traditions themselves. This requires not only that they not be discriminated against, but further, that we attempt to sympathetically understand and be at least open to accepting their self-understandings as legitimate and worthwhile ways of living in the world.

This is of ultimate importance in the context of a colonial history where Western nations have humiliated, and continue to humiliate, Aboriginal peoples and their self-understandings as backward religious ways of life beyond which these individuals need to progress. Aboriginal people are consistently excluded from participation in important social, economic and political arenas and thought to be in dire need of the self-imposed Western mission to civilize and reform their communities (see Turpel, 34; Parekh, 1994, 11-12; 1995, 96-98).¹³

on Kymlicka's account, as I discussed, the political endorsement of such ideals in the social institutions of a community itself would constitute an "internal restriction" from a liberal viewpoint, since it limits individual freedom (if not considered an outright infringement of this freedom). There is little reason that Kymlickian liberals would be required to tolerate such an endorsement, much less accommodate and affirm this as legitimate, given that the individual autonomy of each member in a community is their key motivation for being concerned with culture in the first place.

¹³ For example, the *Delgamuukw v. B.C.* trial decision of 1991 ended with a lecture from B.C. Supreme Court Justice Alan McEachern about how reserve systems have created "fishing footholds and ethnic enclaves." McEachern's ruling that 8000 Gitksan and Wet'suwet'en peoples did not hold any title to the land was in part based on his assessment that Aboriginal cultures were quite "primitive" when Europeans arrived, since they did not use the wheel, have a written language or use domesticated animals for

The process of decolonization is in part about this struggle for respect. The demand for cultural recognition in this sense is critical to the dialogue between Western and non-Western peoples, as RCAP researchers point out. Western liberal nations' offer to "tolerate" and put up with Aboriginal communities is not enough to sustain any sort of healthy relationship between nations, especially when Aboriginal peoples have no reason whatsoever (historically) to trust Western nations in the first place. Does Taylor's view have the theoretical resources to provide recognition in this stronger, critical, sense?

Taylor's position is fully open to this stronger demand. First, since culture is an integral good for a liberal society, and since "substantive" issues are legitimate matters for the political domain, these issues will not be relegated to the private realm and the margins of debate, perhaps because liberals do not supposedly hold any "substantive" visions of their own. Indeed, Taylor does not uncritically assume that Western liberal principles of social and political organization are somehow natural and shared by all other cultures. These are themselves thought to be the particular manifestation of a particular collective imagination of how human beings and society ought to work. As such, in contact with others cultures, Taylor acknowledges that one cannot avoid discussing "substantive" views in the public and political domain, especially when basic concepts may not be shared (1999a, 135).¹⁴

food production. He explained that early Aboriginal life was "nasty, brutish and short" and that "many badges of civilization, as we of European culture understand them, were indeed absent." Since Aboriginal peoples did not meet his ethnocentric standards for "civilization" and "development," they could only be deemed "primitive" (Frideres, 66-67). Evidently, it did not occur to the Justice that perhaps "having a wheel" does not necessarily mean that you are "civilized." If one were to use Gandhi's definition that the mark of a civilized community is to be found in the compassionate manner it treats its weakest members, then Aboriginal peoples were and are among the most civilized of any communities known to humankind.

¹⁴ This is unlike Rawls' view where public reason is to be constrained by a "political" conception of justice and comprehensive doctrines are to be kept to the "non-public" or "domestic" realms, thus essentially barring deep differences and change. Rawls revises this account to allow parties to introduce philosophical doctrines into political discussion, but only if they give public reasons to support whatever such views are introduced to support. But this proviso does not alter the *ideal*, which is still that comprehensive doctrines should be kept to the non-public realm, e.g., in universities or in homes. If these do enter discussions concerning the basic issues of justice, then parties had better be prepared to justify themselves by the use of public reasons appropriately constrained by a political conception of justice (see Rawls, 1999, 37, 54-57, 134, 140-146, 175; 1993, 1-1viii, 220, 223-228, 245-246). I don't see how this revised proviso helps

Second, such discussions are in fact an essential component of recognition: the goal of mutual and sympathetic understanding of each other's worldviews. Indeed, Taylor argues, any agreement between different cultural groups will remain tentative and unstable unless there is such an attempt at sympathetic understanding and dialogue (1999a, 138). Only through such an attempt can different cultural communities live in relative peace. Imposing one's principles of social organization on others, either explicitly like Waldron or implicitly like Kymlicka, will never lead to any kind of just social order. Taylor's own dialogue with Buddhists in Thailand on human rights (1999a, 133-137) is an example par excellence of a liberal trying to sympathetically understand other ways of life and trying to arrive at a mutual consensus.

In sum then, Taylor's position is much more open to an intercultural dialogue with Aboriginal communities and is fully open to accommodating their views of the land. This has to do with the fact that cultural membership is regarded as an integral and independent good for a liberal society and liberal definitions of social organization are not uncritically assumed to set the theoretical parameters for dialogue with non-Western communities. Such a position provides liberals with a strong basis for dialogue with members of other cultures and it provides good

in furthering mutual understanding though, e.g., that Aboriginal peoples should provide "public" reasons that dominant Western parties also share when bringing up their philosophical doctrines. Understanding and appreciating the importance of these issues in such a diverse context may require understanding and being open to reasons that may not be public or that Western communities may simply not share. Rawls' own example of one's attitude towards animals and the environment is telling here. In discussing "non-public" reasons for being concerned with these, Rawls' cites a view similar to that of Aboriginal peoples: "suppose our attitude toward the world is one of natural religion" and we think that "human beings should bear a certain stewardship toward nature." Rawls asserts that, apart from the fact that such an attitude rests in the non-public realm, "the status of the natural world and our proper relation to it is not a constitutional essential or a basic issue of justice" (1993, 245-246; see also 227-230). But from whose perspective is this so? For Aboriginal communities, this is certainly a basic matter of justice that cannot be relegated to the domain of "non-public" reason where it should not ideally enter into political discussion. From an Aboriginal viewpoint, one could argue that *Mother Earth* constitutes a basic unit of moral and political consideration. The ideal on Taylor's approach however is entirely different. The discussion of comprehensive philosophical views is not only considered legitimate but encouraged in the political domain. This is especially the case in a multicultural environment where basic "political" conceptions may not be shared and mutual accommodation will often require a sincere attempt to sympathetically understand and appreciate each other's underlying philosophical justifications and worldviews.

reason to engage in a direct study and deliberation of the actual issues involved, rather than leaving these aside as "private" matters out of which Aboriginal peoples need to be reformed. Taylor therefore lays a solid foundation upon which understanding and agreement between Canadians and Aboriginal communities can be built.

2.3.1 Freedom, Neutrality, and Different Conceptions of Liberal Society

Let me now entertain some objections that one might make to Taylor's account. What is Taylor proposing for liberals? Is he asking them to abandon the ideal of neutrality? Is he asking them to abandon the ideal of individual freedom? Could a society that was not characterized by such ideals be properly called liberal at all?

In response, one might begin by pointing out that liberalism is not itself neutral with regard to conceptions of human flourishing. As Taylor argues, there are some profound philosophical assumptions that underlie the procedural model of liberalism itself. A crucial one is that human dignity is primarily thought to consist in individual autonomy, or, in one's capacity to choose a conception of the good life. "Dignity is associated less with any particular understanding of the good life, such that one's departure from this would detract from one's own dignity, than with the power to consider and espouse for oneself some view or other" (1994, 57). This is a strikingly modern Western view, which extols individual freedom as the highest ideal. It would contrast, for example, with an Aristotelian view, which would deem certain ways of life above others, or, with a Buddhist view, in which care or compassion are the highest ideals. This point can also be made, as I have said, in the meeting ground between Aboriginal and Western cultural groups, where basic notions such as the individual, self, land, and what it is to be a moral agent may radically differ. From the perspective of Aboriginal peoples, the liberal state itself expresses a range of substantive judgments about the ends of human flourishing.

Liberalism cannot therefore itself claim cultural neutrality. And, in certain regards like human rights, Taylor argues, it shouldn't claim neutrality. While a state may allow people to pursue shared ends, it needs to set boundaries to those ends. Taylor argues that one cannot avoid making such substantive judgments here. If one conceives of liberalism as a set of particular values and not as somehow universally neutral, which he argues that one should do, then such judgments are not as problematic: "Liberalism is not a meeting ground for all cultures; it is the political expression of one range of cultures, and it is quite incompatible with other

ranges" (1994, 62).

Many liberals today are willing to admit that liberalism is not neutral in this culturally universal sense and is grounded in a conception of the good life. The current strategy is to develop the most minimalist conception, such that it is compatible with the widest possible range of "thicker" conceptions, while at the same time excluding illiberal visions, say that of Nazi's. For instance, in his *The Problem of Liberalism and the Good*, Henry S. Richards, wants liberals to follow Rawls in this regard and develop a "non-metaphysical" conception of the good life that does not depend on any "deep" notions of the individual, identity through time, place in the world and so on (1990, 12).¹⁵ In essence, the motivation behind this strategy is a second order neutrality. Given the fact that you can never have a view that does not somehow depend on substantive value judgments about human flourishing—you can never have a "view from nowhere," you can never be absolutely neutral—does not mean that you should not strive to be neutral as far as possible. It doesn't mean that you shouldn't give people as much freedom from interference as possible.

But Taylor is not against this, as long as the strive towards neutrality is not considered the only target for a liberal society—what he objects to is neutrality or freedom from interference being thought of as the sole basis, or, the principle which overrides all others when conflicts arise. If this were so, he argues, we would have to abandon some other important independent goods that depend on judgments about what a good

¹⁵ Although I think a common denominator approach can be helpful in focusing in on similarities, I am not sure what to make of such proposals with regard to their claims about philosophical "depth." They remind me of logical positivists who would attempt to deny that their views depended on any metaphysics because they had privileged access to raw uninterpreted facts about the world. If these views were implausible, then the above views, which undoubtedly rest on our self-understandings about social organization, are doubly implausible. For example, these "non-metaphysical" conceptions, or "less" metaphysical, will all rely on the idea of what it is to be a unit of moral and political concern, what it is to be a moral and political agent. You cannot avoid getting "deep" about these issues. You would have to explain, in opposition to Aboriginal peoples or Buddhists, for instance, why animals or the environment are not included. How do you avoid getting into deep philosophical terrain here? Moreover, who determines whether your views are "deep" or not? or less metaphysical?—from whose perspective are they "less metaphysical?" Sometimes the conflict between Western and non-Western communities results when some of these most basic concepts are not in accord or are dissonant. Mutual accommodation and understanding in these circumstances will require a view that does not in principle bar such "deep" issues and which legitimates a dialogue within which these can be fully articulated and addressed.

life requires, such as cultural survival or participatory democracy (1995e, 250).

One might still object to Taylor's view. One might argue that to the extent that a society does indeed pursue such strong collective ends, to the extent that it wavers from the ideal of neutrality and individual freedom from interference as the highest ideals, just shows you that this society is not really liberal in the first place. To the extent that the Quebec government or Canada does make French culture a shared goal just means that it is non-liberal, and perhaps, even illiberal. This objection, one should note, is not just that one does not agree with Quebec's language policies, but more strongly with the view that a society can pursue such shared ends and still be called liberal. Procedural liberalism defines what it means to be a liberal society and Taylor's argument simply starts off on the wrong moral intuition, that is, Quebec is indeed a real liberal society.

But why can't there be more than one way of being a liberal society? Why is the procedural way—where neutrality and freedom from interference are the highest ideals—the only way? As Taylor argues, such a claim could be made by a definitional fiat, but then it is completely trivial and uninteresting (1995b, 203). Why do procedural liberals have a monopoly on what constitutes a liberal society? Moreover, Taylor argues against trying to provide necessary and sufficient conditions here in order to "define" the exact nature of a liberal society: "the complexity of the reality and the multiplicity of its facets defeat us." And, "I think there is a danger in trying to make clear definitions, because they narrow the scope of our attention in damaging or even fatal ways" (1995d, 257, 287).

Perhaps there is no one thing that liberal societies have in common, but rather, they are related and resemble one another in a variety of ways.¹⁶ These would include features such as, individual freedom,

¹⁶ To serve as a useful reminder, let me quote a well known passage by Wittgenstein here: "I am saying that these phenomena have no one thing in common which makes us use the same word for all,—but that they are *related* to one another in many different ways. And it is because of this relationship, or these relationships, that we call them all "language." . . . Consider for example the proceedings that we call "games." I mean board-games, card games, ball-games, Olympic games, and so on. What is common to them all?—Don't say: "There *must* be something in common, or they would not be called "games"—but look and see whether there is anything in common to all. For if you look at them you will not see something that is common to all, but similarities, relationships, and a whole series of them at that. . . . Look for example at board-games, with their multifarious relationships. Now pass to card-games; here you find many correspondences with the first group, but many common features drop out, and others appear. When we pass to ball-games, much that is common is retained, but much is lost—

neutrality, representative government, a regime of entrenched rights, rule of law, guarantee of certain freedoms, the separation between religion and politics, or the public and private, self-rule, civic participation, a strong public sphere, respect for cultural diversity, toleration of differences, and so on (1995d, 257-258). The manner in which a country may apply and interpret these principles may be different, or, perhaps it may emphasize one feature over another. Perhaps, it may just take a different approach on certain issues. Canada, for example, favours a liberalism that gives more weight to cultural diversity, to economic equality and civic participation than the U.S. Its policy on multiculturalism is often described in terms of a "cultural mosaic," where differences are seen as something that can enrich the country in contrast to the U.S. melting pot or assimilationist model. Canada's treatment of national minorities tries to aim at accommodation, recently anyway.¹⁷ This does not mean that Canada is not liberal.

But even if a liberal society like Canada's can be characterized by the pursuit of a plurality of integral and independent goods, including cultural survival, one could argue that Taylor's view still suffers from a problem I mentioned before. One might argue that his view of liberal society is simply unstable: How do you adjudicate between various goods when they conflict, say between individual freedom and culture, apart from saying that the pursuit of cultural membership should be restricted by basic human rights? Isn't this the crucial question?

Are they all 'amusing'? Compare chess with noughts and crosses. Or is there always winning and losing, or competition between players? Think of patience. In ball games there is winning and losing; but when a child throws his ball at the wall and catches it again, this feature has disappeared. Look at the parts played by skill and luck; and at the difference between skill in chess and skill in tennis. Think now of games like ring-a-ring-roses; here is the element of amusement, but how many other characteristic features have disappeared! And we can go through many groups of games in the same way; can see how similarities crop up and disappear. And the result of this is: we see a complicated network of similarities overlapping and criss-crossing; sometimes overall similarities, sometimes similarities in detail. I can think of no better expression to characterize these similarities than "family resemblances" (1953, 31e-32e).

¹⁷ For example, as Tully notes in his recent discussion of the *Reference Re the Secession of Quebec*, the Supreme Court of Canada interprets the principle of federalism as facilitating collective rights for cultural minorities, the Court writes: "The principle of federalism facilitates the pursuit of collective goals by cultural and linguistic minorities which form the majority within a particular province. This is the case in Quebec, where the majority of the population is French-speaking, and which possesses a distinct culture" (2000a, 14).

One could argue that such tensions can only be resolved through actual public deliberation and dialogue on the substantive issues involved. These are highly context specific and one cannot provide any insights without discussing the issue in question. In fact, questions of cross-cultural understanding critically depend on such a dialogue, as Taylor argues. As a matter of abstract theory, apart from an actual discussion, the most one can do then is provide a framework that makes these issues legitimate matters for the political domain and that acts as a guide in approaching these problems. This is in fact what Taylor does do.

Conclusion

As the Royal Commissioners argue, disputes over land between Aboriginal peoples and Canadians cannot be wholly resolved without such respect and recognition of cultural differences. These disputes require Canadians to engage in an effort to sympathetically understand Aboriginal perspectives. This is of critical importance in the context of a colonial history where Aboriginal peoples' cultures and traditional self-understandings have been denigrated for centuries. This history has left a deep scar on Aboriginal communities and all but completely destroyed the relationship between Aboriginal and Canadian society.

In sum then, if liberals are to accommodate and recognize Aboriginal self-understandings concerning the land, or *any* other issue for that matter, then they must adopt some form of Taylor's position with regard to cultural membership. The view that such membership is not relevant to issues of justice and politics, apart from being conceptually problematic, can only lead to further colonialism. The view that such membership is a good in so far as it is instrumental to the development of liberalism's favoured value and form of social organization, and to suggest that non-liberal nations reform to these, does not accommodate many of Aboriginal people's critical concerns. Nor does this view deal with their self-understandings with equal regard. This position too can only lead to further policies aimed at assimilation. Instead, liberals must conceive of cultural membership as an integral and independent good for a liberal society if they are to be as receptive as possible to some of the key concerns of these non-Western communities. This approach is the most effective in accommodating worldviews unlike their own. It is therefore the most open to recognition and dialogue.

Works Cited

- Alfred, Taiaiake. 1999. *Peace, Power, Righteousness: An Indigenous Manifesto*. Toronto: Oxford Press.
- DeMallie, Raymond J. 1987. "Lakota Belief and Ritual in the Nineteenth Century." In Raymond J. DeMallie and Douglas R. Parks (Eds.), *Sioux Indian Religion: Tradition and Innovation* 25-43. London: University of Oklahoma Press.
- Gunn Allen, Paula. 1980. "Iyani: It Goes This Way." In G. Hobson (Ed.), *The Remembered Earth: An Anthology of Contemporary American Indian Literature* 191-193. Albuquerque: University of New Mexico Press.
- Henderson, James Sakj Youngblood. 1995. "Mikmaw Tenure in Atlantic Canada." *Dalhousie Law Journal*. 18: 196-294.
- Kymlicka, Will. 1989. *Liberalism, Community and Culture*. Oxford: Clarendon Press.
- _____. 1995. *Multicultural Citizenship: A Liberal Theory Of Minority Rights*. Oxford: Clarendon Press.
- _____. 1998. *Finding Our Way: Rethinking Ethnocultural Relations in Canada*. Toronto: Oxford University Press.
- _____. 2000. "American Multiculturalism and the 'Nations Within.'" In Duncan Ivison, Paul Patton and Will Sanders (Eds.), *Political Theory and the Rights of Indigenous Peoples* 216-236. Cambridge: Cambridge University Press.
- _____. 2001. *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship*. New York: Oxford University Press.
- Little Bear, L., M. Boldt, and J. Long. 1984. *Pathways to Self-Determination: Canadian Indians and the Canadian State*. Toronto: University of Toronto Press.

- Lyons, Oren. 1980. "An Iroquois Perspective." In Christopher Vecsey and Robert W. Venables (Eds.), *American Indian Environments: Ecological Issues in Native American History 171-174*. Syracuse: Syracuse University Press.
- Macklem, Patrick. 1993. "Distributing Sovereignty: Indian Nations and Equality of Peoples." *Stanford Law Review* 45: 1311-1367.
- Macpherson, C.B. 1989. *Democratic Theory: Essays in Retrieval*. New York: Oxford Press.
- Mercredi, Chief Ovide. 1993. "First Nations and Self-Determination." In K.E. Mahoney and P. Mahoney (Eds.), *Human Rights in the Twenty-First Century* 161-166. Boston: Martinus Nijhoff.
- Obomsawin, Alanis producer and director, and Wolf Koenig, producer. 1993. *Kanehsatake: 270 Years of Resistance* [Film]. Available from National Film Board of Canada, Montreal, P.Q.
- Parekh, Bhikhu. 1994. "Superior People: The Narrowness of Liberalism from Mill to Rawls." *Times Literary Supplement*, February 25, 11-13.
- _____. 1995. "Liberalism and Colonialism: A Critique of Locke and Mill." In Nederveen Pieterse and Bhikhu Parekh (Eds.), *The Decolonization of Imagination: Culture, Knowledge, and Power* 81-98. London: Zed Books.
- _____. 2000. *Rethinking Multiculturalism: Cultural Diversity and Political Theory*. Cambridge, MA: Harvard University Press.
- Paine, Robert. 1999. "Aboriginality, Multiculturalism and Liberal Rights Philosophy." *Ethnos* 64 (3): 325-49.
- Purvis, Andrew. 1999. "Whose Home And Native Land?: Across Canada, Aboriginal Peoples are Winning Back Land, Money--and Political Power. *Time*, February 25 16-23 (Canadian Edition).
- Rawls, John. 1993. *Political Liberalism* (1996 paperback ed.). New York: Columbia University Press.

- _____. 1999. *The Law Of Peoples: With The Idea of Public Reason Revisited*. Cambridge, Massachusetts: Harvard University Press.
- Royal Commission on Aboriginal Peoples: Restructuring the Relationship* 1996. Volume 2, Part One. The Government of Canada.
- Royal Commission on Aboriginal Peoples: Restructuring the Relationship* 1996. Volume 2, Part Two. The Government of Canada.
- Richardson, Henry S. 1990. "The Problem of Liberalism and the Good." In R. Bruce Douglass, Gerald R. Mara and Henry S. Richardson (Eds.), *Liberalism and the Good* 1-28. New York: Routledge.
- Schirmer, Jennifer. 1988. "The Dilemma of Cultural Diversity and Equivalency in Universal Human Rights Standards." In Theodore E. Downing *et. al.* (Eds.), *Human Rights and Anthropology* 91-106. Cambridge, Mass.: Cultural Survival, Inc.
- Starna, William A. 1988. "Aboriginal Title and Traditional Land Use: An Anthropological Perspective." In Christopher Vecsey and William A. Starna (Eds.), *Iroquois Land Claims* 31-48. Syracuse: Syracuse University Press.
- Svensson, Fances. 1979. "Liberal Democracy and Group Rights: The Legacy of Individualism and its Impact on American Indian Tribes." *Political Studies* 27: 421-439.
- Taylor, Charles and Guy Laforest (Eds.). 1993. *Reconciling the Solitudes: Essays on Canadian Federalism and Nationalism*. Montreal: McGill-Queens University Press.
- Taylor, Charles. 1994. "The Politics of Recognition." In Amy Gutmann (Ed.), *Multiculturalism: Examining: The Politics of Recognition* 27-73. Princeton, NJ: Princeton university Press.
- _____. 1995a. "Comparison, History, Truth." In *Philosophical Arguments* 146-164. Cambridge, MA: Harvard University Press.
- _____. 1995b. "Cross-Purposes: The Liberal-Communitarian Debate." In *Philosophical Arguments* 181-203. Cambridge, MA:

Harvard University Press.

_____. 1995c. "Irreducibly Social Goods." In *Philosophical Arguments* 127-145. Cambridge, MA: Harvard University Press.

_____. 1995d. "Liberal Politics and the Public Sphere." In *Philosophical Arguments* 257-288. Cambridge, MA: Harvard University Press.

_____. 1995e. "Charles Taylor Replies." In James Tully and Daniel M. Weinstock (Eds.), *Philosophy In An Age Of Pluralism: The Philosophy of Charles Taylor in Question*. New York: Cambridge University Press.

_____. 1999a. "Conditions of an Unforced Consensus on Human Rights." In Joanne R. Bauer and Daniel A. Bell, *The East Asian Challenge For Human Rights* 124-144. Cambridge: Cambridge University Press.

_____. 1999b. "Nationalism and Modernity." In Ronald Beiner (Ed.), *Theorizing Nationalism* 219-245. New York: State University of New York Press.

_____. 1999c. "Democratic Exclusion and Its Remedies?. The John Ambrose Stack Memorial Lecture." In Alan C. Cairns *et. al.* (Eds.), *Citizenship, Diversity, and Pluralism* 265-287. Montreal: McGill-Queens Press.

Tully, James. 1994. "Aboriginal Property and Western Theory: Recovering a Middle Ground." *Social Philosophy and Policy* 112: 153-180.

_____. 1995. *Strange Multiplicity: Constitutionalism in an Age of Diversity*. Cambridge: Cambridge University Press.

Turpel, Mary Ellen. 1991. "Aboriginal Peoples and the Canadian Charter: Interpretive Monopolies, Cultural Differences." *Canadian Human Rights Yearbook* 6: 3-45.