

CHANDRAN KUKATHAS



*The Liberal
Archipelago*

*A Theory of Diversity
and Freedom*

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Diversity and Freedom

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For my mother and my sisters
And to the memory of my father, and Anna

Plutarch said long ago that the civilizing of barbarians had been made the pretext for aggression, which is to say that a greedy longing for the property of another often hides itself behind such a pretext. And now that well-known pretext of forcing nations into a higher state of civilization against their will, the pretext once seized by the Greeks and Alexander the Great, is considered by all theologians, especially those of Spain, to be unjust and unholy.

Grotius, *The Freedom of the Seas*, p. 14

I am not aware that any community has a right to force another to be civilised. So long as the sufferers by the bad law do not invoke assistance from other communities, I cannot admit that persons entirely unconnected with them ought to step in and require that a condition of things with which all who are directly interested appear to be satisfied, should be put to an end because it is a scandal to persons some thousands of miles distant, who have no part or concern in it. Let them send missionaries, if they please, to preach against it; and let them, by any fair means (of which silencing the teachers is not one), oppose the progress of similar doctrines among their own people.

J. S. Mill, *On Liberty*, p. 92

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PREFACE

The origins of this book lie in the prejudices of its author. And since this is a political work, it may prove not only interesting but also helpful to the curious reader to know what these are.

This is a philosophical work about how to respond politically to cultural diversity. My interest in such matters was sparked by family experience. Growing up as a Jaffna Tamil in Malaysia in the 1960s I was told that, as members of a non-indigenous race, we would not receive the same opportunities as Malays: the *bumi putra* or ‘sons of the soil’. This struck me as unfair, not only because I had been born a Malaysian, to parents (and two grandparents) themselves born on the Malay peninsula, but also because I could not go anywhere in the world and be a ‘son of the soil’; not even to Jaffna, since the Tamils, having lived on Ceylon for only a thousand years, were regarded as Johnny-come-latelies there as well. Since that was how my father saw things too, he tried, unsuccessfully, to migrate and then (like many of his relatives) to educate his children abroad. And so I ended up in Australia, while my sisters found themselves in other parts of the world.

It would be wrong to present this as a hard-luck story. For the most part, luck has tended to be on my side. But the family’s experiences have always been an important touchstone for my reflections on the politics of ethnicity. Perhaps it is the source of my long-held dislike for ethnic labelling, and for ethnic politics generally. For it seemed to me that it made us think of ourselves as people with a grievance, and think of others as people who were our exploiters—without doing much to make life fairer or relations with other peoples any happier.

In Australia, however, as things turned out, the issue that most caught my attention was the struggle of Aboriginal people for land rights, for recognition, and redress for past injustice. My thinking was greatly influenced by Stewart Harris, a journalist who worked for the *Times* of London and, later, the *Canberra Times*, and whose writings, activism, and example, persuaded me that Aboriginal people had a powerful moral claim both to regain some of the land they had lost, and to have the freedom to live as they wished, rather than be assimilated into Australian society. I thus found myself hostile to ideas of affirmative action, group rights, and ethnic politics, but at the same time deeply convinced of the legitimacy of the claims of a particular ethnic group whose recent history was one of enormous injustice and suffering.

It would be wrong to suggest that an early appreciation of this inconsistency led immediately to deeper philosophical reflection on the issues dealt

with in this book. It was an inconsistency I barely appreciated in the beginning, and my various convictions led me nowhere in particular. But when I did come to write as a political theorist about cultural diversity these were (at least some of) the prejudices with which I was encumbered. And the theory of cultural diversity I have advanced here (and in other writings) is, in part, an attempt to make sense of my conflicting convictions.

There is, however, a third prejudice that ought also to be revealed. I grew up in a household which, by and large, had little regard for politics, and even less regard for government. Though he spent most of his life writing about politics and politicians (criticizing their absurd schemes and their scheming ways), my father never tired of reminding us (particularly when he was called down to the police station to explain himself for writing something that some minor official suspected was unflattering of the government) that nations and states do not matter. This does not mean (alas) that they are irrelevant. But they are not important, and we should not get too attached to them. Nor expect very much from them. Many friends and colleagues who see things very differently have not been able to persuade me otherwise. These prejudices have made my sympathies libertarian and anarchistic, and drawn me to the writings of such thinkers as Hayek and Oakeshott among contemporary political philosophers. Though their ideas are little discussed in the argument that is about to be made, their influence is undoubtedly here in these pages.

These observations may go a little way towards accounting for the slightly eccentric—‘elaborate and perverse’, according to Brian Barry—character of the theory presented here. But there are other sources as well. I have accumulated many debts over the years and they need to be acknowledged. My longest standing debts are to my teachers, David Band, and the late Brian Beddie, who, in different ways, introduced me to political theory and inspired me to pursue the life of a scholar. Brian in particular I greatly miss not only for his friendship but also for his criticism, his encouragement, and for his appreciation of how much I was struggling with the ideas I had engaged with. My longest running debt, however, is to my friend and colleague, William Maley, who has read and commented on most of my writings, and was often present in the printer room even as half-sections were being produced, ever-ready to discuss whatever half-baked thought I might come up with. More importantly, he has been a true friend, whose loyalty and wise counsel I value more than I can say.

Among my more recent debts, the most important is to Moira Gatens. Apart from reading the entire manuscript and supplying me with critical comments and suggestions, she has been a source of great encouragement and sympathy. Although, once again, all this pales beside the greater gifts of friendship and practical support in difficult times.

Over the years many people have commented on the papers and chapters that have turned into *The Liberal Archipelago*, and it is good to be able to

thank them at last. My greatest debt here is to Will Kymlicka, who not only encouraged and assisted in the publication of some of my early work, but also read different drafts of the final work and did a great deal to re-shape and improve the book which, ultimately, challenges his own ideas. His generosity of spirit is well-known, and I am only too happy to add my name to the list of appreciative friends and colleagues.

I am also grateful to Joseph Carens and Daniel Weinstock, who read the manuscript in its entirety and offered more helpful advice and searching criticism than I could handle. Were I to try to deal with every issue they raised I would be writing forever, but I hope I have dealt with the most important ones. I remain grateful for their help which has, I hope, improved the final product and which, I know, has taught me a great deal. David Miller also read the complete manuscript and offered more of the support and encouragement he has showered upon me for the last twenty years. This is a debt that can never be repaid.

There is a long list of people who have helped me by commenting on parts of this work, sometimes in seminars, sometimes in written notes, and sometimes in long conversations during which I struggled to explain myself. Apart from some of those already mentioned, these people include: Ruth Abbey, Randy Barnett, Brian Barry, Andrea Baumeister, Rajeev Bhargava, Daniel A. Bell, Akeel Bilgrami, Ronald Beiner, Geoffrey Brennan, Eamonn Callan, William Dennis, Douglas Den Uyl, Hans Eicholz, João Espada, Claire Finkelstein, William Galston, Jerry Gaus, Phillip Gerrans, Robert Goodin, John Gray, Dan Greenberg, Russell Hardin, Barry Hindess, Peter Jones, John Kekes, Charles King, Julian Lamont, Geoffrey Levey, Jacob Levy, Loren Lomasky, David Lovell, Steven Lukes, Stephen Macedo, Susan Mendus, Fred Miller, Ken Minogue, Tariq Modood, Margaret Moore, Don Morrison, Richard Mulgan, Andrew Norton, Cliff Orwin, Emilio Pacheco, Tom Palmer, Bhikhu Parekh, Carole Pateman, Paul Patton, Ellen Paul, Jeffrey Paul, Philip Pettit, Anne Phillips, Ross Poole, Rob Reich, Michael Ridge, Nancy Rosenblum, Deborah Russell, Ayelet Shachar, Barry Shain, Jeremy Shearmur, George H. Smith, Jeff Spinner-Halev, Yael Tamir, John Tomasi, James Tully, Steven Wall, Stuart Warner, Larry White, Andrew Williams, Melissa Williams, and Iris Young.

Over the years I have been lucky enough to receive support from a number of institutions. My greatest debt is to my department, not only for tolerating a number of leaves of absence, but also for providing a happy and collegial environment that has made coming to work a pleasure. I am especially grateful to my colleagues for stepping in during my long illness and taking over my classes with such alacrity. The University College of the University of New South Wales at the Australian Defence Force Academy has also generously provided me with travel and research funding.

Some of the research and writing was conducted with the support of grants and fellowships. I am grateful to the Institute for Humane Studies, and in

particular to Walter Grinder, Leonard Liggio, John Blundell, and Christine Blundell for the assistance they have given me over the years. The Social Philosophy and Policy Center at Bowling Green State University generously provided me with a visiting fellowship in 1991, and for that I am especially grateful to Jeff Paul, Ellen Paul, and Fred Miller. Liberty Fund Inc generously provided me with a position as visiting scholar in 1995, and I am especially grateful to Emilio Pacheco and Charles King for arranging that visit. I also wish to acknowledge the generous support of the Earhart Foundation. The last stages of writing were completed as a visitor in the Social and Political Theory Program at the Research School of Social Sciences at the Australian National University. I am especially grateful to Geoffrey Brennan, Bob Goodin, and Philip Pettit for making that possible. Finally, I have been lucky enough to be associated with the Centre for Independent Studies in Sydney, and gratefully acknowledge its support, and also the friendship extended to me by Greg and Jenny Lindsay.

To Dominic Byatt, my esteemed editor at OUP, I owe thanks for his patience and encouragement and for one cup of coffee.

I should end by acknowledging some people who have had very little to do with this book but much to do with my life. First, my thanks go to Dr Cao Ling Ling, for restoring my health. Second, my thanks go to Isabel Pacheco for many years of friendship and hospitality, and for providing me with a home away from home. Finally, I would like to thank my wife, Debbie, and my children, Nathan, Sam, and Sarah, not just for dragging me away from the study, but for their love and companionship.

Many of the arguments presented in this book have appeared in papers already published, though what appears here now has been considerably revised. The published articles from which I have drawn include: 'Are there any cultural rights?', *Political Theory*, 20, 1992, pp. 105–39; 'Cultural rights again: a rejoinder to Kymlicka', *Political Theory*, 20, 1992, pp. 674–80; 'Liberalism, Communitarianism and Political Community', *Social Philosophy and Policy*, vol. 13, no.1, 1996, pp. 80–105; 'Cultural toleration', in Will Kymlicka and Ian Shapiro (eds), *Ethnicity and Group Rights*, *NOMOS* 39, New York, New York University Press, 1997, pp. 60–104; 'Liberalism, Multiculturalism and Oppression', in Andrew Vincent (ed.), *Political Theory: Tradition and Diversity*, Cambridge University Press, 1997, pp. 132–53; 'Multiculturalism as Fairness', *Journal of Political Philosophy*, 5(4) 1997, pp. 406–27; 'Liberalism and Multiculturalism: The Politics of Indifference', *Political Theory*, 26(5), 1998, pp. 686–99; 'O arquipelago liberal: contronos de um conceito de liberalismo', *Análise Social*, XXXIII(2–3), 1998, pp. 359–78; 'Two concepts of liberalism', in J. Espada, M. Plattner, and A. Wolfson (eds), *Liberalism Classical and Modern: New Perspectives*, Lexington Books, 2001, pp. 86–97; 'Equality and Diversity', *Philosophy, Politics and Economics*, 1(2), 2002, pp. 185–212.

Introduction

[A]nd thus there would have been very many kingdoms of nations in the world, as there are very many houses of citizens in a city.

(Saint Augustine¹)

The history of societies is at once a story of human cooperation and a tale of unrelenting conflict. Out of the diversity of human settlements have come both the progress of the arts and sciences and centuries of civil strife. While the possibility of a peaceful coexistence has never been in doubt, its durability has always been uncertain. Political philosophy has, thus, offered up a variety of reflections upon the foundations of social order—reflections which have tried not only to account for the causes of order but also to commend arrangements to which all societies might properly aspire.

Such reflections have always been shaped by circumstances. The times pose the questions philosophers address.

The second half of the twentieth century has been no different, presenting a variety of problems for philosophical attention. The emergence of totalitarianism, and the advent of the cold war between adversaries armed with weapons of extermination, provoked a long examination of the major ideologies which dominated political debate: communism, socialism, and liberal democracy among others. At the same time, the breakup of the European colonial empires in Africa, Asia, and the Middle East, in combination with the growth of movements of national independence and religious reassertion, inspired further philosophical efforts, analysing and criticizing modern political society—particularly the traditions and institutions of the west. In the western democracies themselves, the triumphs and the crises of the welfare state—along with the postwar reconstruction of economic and political institutions—the rise of civil rights and women's movements, and the extension of cultural pluralism (brought about by immigration and by rising demands of

¹ Saint Augustine (1993: Book IV, Section 15, p. 123).

‘indigenous’ peoples) occasioned a sustained debate on the foundations of liberal constitutionalism.

By the century’s end, after fifty years of postwar social transformation, there was no resolution—political or philosophical—of the basic problems of human association. While some have seen in the decline and fall of the Soviet empire a beginning of the end of history (culminating in the triumph of liberal democracy),² the evidence of daily events suggests otherwise. Communist totalitarianism has been succeeded by the revival of ethnic nationalisms, many of which find expression in secessionist demands; postcolonial independence has produced divided (and dividing) societies more often than it has created stable parliamentary democracies; and in the liberal democracies of North America, western Europe, and the south Pacific, despite half a century of relief from the interruptions of war and a phenomenal growth in wealth, the challenges posed by cultural diversity have provoked bitter political conflicts and an uneasiness that society’s basic institutions are on trial.³

The problem addressed by contemporary political philosophy is, fundamentally, the problem of coping with diversity in a world in which particularity or difference or separateness is being reasserted. The question, put slightly differently, is: how can diverse human beings live together, freely, and peacefully?

One particularly prominent kind of answer to this question goes under the name of ‘liberalism’. The term liberalism identifies a political outlook which responds to human diversity by advocating institutions that permit different beliefs and ways of life to coexist; it accepts the fact of the plurality of ways of life—of the multiplicity of religious and moral values in the modern world—and favours toleration. Liberalism differs from other political philosophies in that it rejects the idea of an organic and spiritually unified social order in which the interests of the individual are brought into perfect harmony with the interests of the community. Individuals have different ends; there is no single, common goal that all must share; and, necessarily, these ends come into conflict. The problem, from a liberal point of view is to regulate rather than to eradicate these conflicts.

Yet while liberalism has been proposed as an answer to the problem of accounting for the basis of human cooperation, it also continues to be challenged. According to one prominent line of criticism, liberalism can offer little to our understanding of modern predicaments because it is burdened by the philosophical follies of the Enlightenment.⁴ As a universalist political theory which mistakenly assumes that human institutions—and political authority—can

² The argument is most fully developed by Francis Fukuyama (1992).

³ See, for example, Elshtain (1995).

⁴ This view has been defended comprehensively by John Gray. See the collection of papers on ‘Liberalism’ which make up *Social Research*, 61(3), 1994; see in particular Gray’s ‘After the New Liberalism’, pp. 719–35; and also Gray (1995b). No less important a critic of the Enlightenment is Alasdair MacIntyre; see in particular MacIntyre (1981).

be given a general rational justification, liberalism is unable to account for the particular attachments—religious, national, cultural—which prevail in modern societies.⁵ Indeed the commonly told story of the Enlightenment's dawn, heralding a revolutionary conception of humanity and society marked by equality, and by liberty of conscience, has come to be viewed with suspicion. The Enlightenment narrative presented liberation as the elimination of difference: no longer would individuals be viewed or treated as members of any particular race, sex, class, or ethnic group. Yet liberation was not to be achieved by the suppression of difference. On the contrary, such emancipation required that difference be recognized—and the different (in the shape of oppressed minorities) be empowered.⁶

Many contemporary liberal philosophers do not share these views, for there is a good deal of disagreement within the liberal tradition. What, precisely, should be the terms of social cooperation? How should the claims of cultural minorities be addressed? Can a liberal society tolerate illiberal communities (or accommodate illiberal immigrants)? Generally, how can a society marked by cultural diversity and particular (group) loyalties be sustained? The most prominent liberal philosopher who has offered answers to these questions claims that social cooperation is likely to be maintained in the face of pluralism only if society is governed by a shared conception of justice. And such a conception of justice must be underpinned not by a set of comprehensive moral commitments (to substantive values, such as individual autonomy) but by a political commitment to pursuing a reasonable consensus within the confines of a society's traditions.⁷ Yet others have tried to deal with the same problems by rethinking liberalism in a different way, trying to build onto its foundations an acceptance of the rights of minority groups—without at the same time relinquishing its comprehensive commitments to autonomy.⁸

Generally, liberal philosophers are still struggling with the problems posed for political theory by the facts of moral diversity, group loyalty (to particular ethnic and religious communities), and nationalist sentiment.⁹

This book endeavours to grapple with these various issues. The general question it puts—and attempts to answer—is: what is the principled basis of a free society marked by cultural diversity and group loyalties? More particularly, it asks: whether such a society requires political institutions which recognize minorities; how far it should tolerate such minorities when their ways differ from those of the mainstream community; to what extent political institutions should address injustices suffered by minorities at the hands of the

⁵ See, for example, Gray (1995a: 111–35).

⁶ The most important statement of this position is Iris Marion Young (1990). See also Charles Taylor (1994).

⁷ This is, roughly, the answer given by John Rawls (1993).

⁸ The most important work here is that of Will Kymlicka (1989, 1995b).

⁹ On the last point see Yael Tamir (1993). See also David Miller (1995).

wider society, and also at the hands of the powerful within their own communities; what role, if any, the state should play in the shaping of a society's (national) identity; and what fundamental values should guide our reflections on these matters.

Yet while the particular questions are important—indeed, crucially important—the larger ambition of this study is to offer a general theory of the free society (under the circumstances of diversity). And since it takes it as given that the most defensible account of the free society is, in some sense, a *liberal* account, this book is also an essay on the foundations of liberalism.

The Thesis of this Work

At the most general level, the question addressed here is: what is the principled basis of a free society marked by cultural diversity and group loyalties? The answer offered, which goes to make up the core thesis of the book, is roughly as follows.

A free society is an open society and, therefore, the principles which describe its nature must be principles which admit the variability of human arrangements rather than fix or establish or uphold a determinate set of institutions within a closed order. Such principles should take as given only the existence of individuals and their propensity to associate; they need not and should not assume the salience of any particular individuals or of any particular historical associations. Granted this, the fundamental principle describing a free society is the principle of freedom of association. A first corollary of this is the principle of freedom of dissociation. A second corollary is the principle of mutual toleration of associations. Indeed, a society is free to the extent that it is prepared to tolerate in its midst associations which differ or dissent from its standards or practices. An implication of these principles is that political society is also no more than one among other associations; its basis is the willingness of its members to continue to associate under the terms which define it. While it is an 'association of associations', it is not the only such association; it does not subsume all other associations. The principles of a free society describe not a hierarchy of superior and subordinate authorities but an archipelago of competing and overlapping jurisdictions. A free society is sustained to the extent that laws honour these principles and authorities operate within such laws.

This formal presentation of this book's central philosophical thesis is undoubtedly abstract—and indeed, austere. A few informal remarks may serve, therefore, further to clarify the nature of the argument to be offered. The critical point is that this argument takes issue with a number of other approaches to the problem of coping with diversity. John Rawls deals with the problem by looking for principles of justice which will attract an overlapping consensus of support

within a closed society. Will Kymlicka deals with it by advocating group rights for particular cultural communities. Iris Young argues for the democratic recognition of groups whose interests would be served by their political empowerment. The position taken in this work, by contrast, rejects the assumption of a closed society, and rejects the idea of recognizing group rights or according minorities political representation. In a free society, it asserts, only the freedom to associate is fundamental. There is, therefore, no reason *of principle* to enforce any other kinds of claims to rights or to representation. There is also every reason to tolerate the different forms that associations might take.

This position is not likely to prove congenial in an era of affirmative action, aboriginal rights, and preferential policies generally. It is at odds with much of contemporary political theory, however, fundamentally because it denies two things: first, that any particular group or class or community should be given special recognition; and second, that there is any authoritative standpoint—political or philosophical (or metaphysical)—from which such recognition may ultimately be granted. The model of a free society it proposes is one in which there may be many associations, but in which none are ‘privileged’; equally, there may be many authorities, all authority resting on the acquiescence of subjects under that authority (rather than on justice). The theory of the free society is therefore an account of the terms by which different ways *coexist* rather than an account of the terms by which they *cohere*.

To put this point another way, the theory offered here differs from those presented in much of contemporary political philosophy—and contemporary liberal theory in particular—because it focuses on a different question. Much of recent theorizing begins with the question: what should the state or the government—or ‘we’—do, or permit, in a good society? It asks what is it the role of political authority to promote, and by what principles or considerations should it be guided; in short, by what values should ‘we’ live? Within liberal theory there is an important division between those who think the state should be guided by a substantive view of the good life (which it may justifiably promote), and those who think the state should remain *neutral* about the good life. In the theory developed here, however, a different starting point is adopted. The important question is taken to be, not ‘what should the state or the government—that is, authority—do?’ but ‘who should have authority?’ The question of the *justice* of an action or an arrangement, and the question of its *legitimacy* are two different matters, even if they may be importantly related. The focus here is on the latter.

Now, the obvious question to ask is: why take this starting point—particularly since contemporary liberal theory, revived by the work of John Rawls, has generally seen fit to see the question of justice as primary. ‘Justice is the first virtue of social institutions’, Rawls famously remarked, before going on to present his magisterial theory. So compelling was this entire approach that Robert Nozick was moved to assert that ‘Political philosophers now must either

work within Rawls's theory or explain why not'.¹⁰ Few liberal philosophers have thought it necessary to explain why not since, by and large, they have chosen to work within the Rawlsian framework. The classical social contract theorists (such as Hobbes, Locke, and Rousseau) used the device of contractarian argument to answer a question about the legitimacy of the state. Rawls's contractarianism, however, has addressed itself fundamentally to a question about social or distributive justice. And liberal writers (contractarian or otherwise) since Rawls have generally addressed that same question: what are the rights, liberties, and duties, or entitlements and obligations, of people living in a just society?

One reason for not approaching the problem in this way is that the condition which has given rise to the question of the nature of the free society (or the good society more generally) is a condition of diversity. In a world of moral and cultural diversity one of the subjects over which there is dispute, and even conflict, is the subject of justice. Different peoples, or groups, or communities, have different views or conceptions of justice. In these circumstances the question is: how can people live together freely when there is this sort of moral diversity? One kind of answer suggests that the solution is to articulate a conception of justice that is capable of commanding widespread, if not universal, assent.¹¹ But the problem with this move is that, in order to secure that assent, it is necessary to strip the conception of justice of much of its substantive content or run the risk of having a theory which commands the loyalty of only a small subset of its audience. Yet stripped of too much of its substantive content it ceases to be a theory of justice at all. (This may, in the end, be what is needed, as this work will suggest; but in that case, there is no point in starting with the question of justice.)

A second reason for not approaching the problem within anything like the Rawlsian framework is that it is important not to begin by assuming a closed society. Several considerations suggest this. One is that it begs an important question that is being considered when it is asked, how can diverse people(s) live together freely, or, more generally, what is the nature of the good society. That is the question of whether the good society or a free society is, indeed, a closed society. The question of how diverse people(s) can live together freely is not just a question about how a set of people within settled boundaries should arrange their institutions; it is also a question about how those boundaries should be drawn, and what those boundaries mean. To begin, therefore, with the assumption that we should confine our analysis to the problem of specifying rights and duties within fixed boundaries is to assume away an important subject of contention.

¹⁰ Robert Nozick (1974: 183).

¹¹ John Rawls offers such a solution in *Political Liberalism*.

Another related consideration is that to assume a closed society is to make an abstraction which takes us (conceptually) too far away from actual societies. The significance of the state as a form of social order with the power to open and close its borders, restricting the flow of people and goods, makes it tempting to assume that societies can be divided along and distinguished using, national boundaries. But the world is not made up simply of states, and borders are not always tightly sealed. People operate across, and societies straddle, national boundaries. Furthermore, the world is now riddled with international associations and organizations, ranging from transnational corporations to international interest groups, which are larger and more powerful than many states.

To be sure, there are important questions to be asked about conduct within these associations—particularly the state. But these questions should not assume that such associations are more stable and enduring than they are. This consideration also suggests we should not begin by assuming a closed society with a settled authority, or taking the primary question to be, what may or should that authority do.

The third reason for not approaching the problem within the Rawlsian framework is that the most fundamental question in political philosophy is the question of authority: where it should lie, and how it should be confined. The primary question of *politics* is not about justice or rights but about power, who may have it, and what may be done with it. Views about rights or about justice may have a significant bearing on any answer to this question; but this remains the important question. The Rawlsian approach begins by recognizing that people differ on the question of justice because they have particular attachments and interests, and then attempts to find a conception of justice which all could accept in spite of their differences. It looks to find an answer to a fundamental question in moral theory. What it does not ask is: what is to be done if not everyone agrees with the resulting theory of justice: who should have the authority to act? What makes authority legitimate, and what are its bounds?

In rejecting the Rawlsian framework, the approach taken here returns to the classic questions which have dominated political theory, and were addressed by Hobbes, Locke, and Rousseau—among others. Rawls turned to the social contract tradition for a method to answer a fundamental question of moral theory: the question of justice. The present work returns to the social contract tradition's original concerns: the question of authority.

Ultimately, the present work is an attempt to answer the question, what is the place of authority in a free society? Having asked how can a diversity of people(s) live together freely given their differences, it asserts that the answer lies in the way authority is allocated. More particularly, it argues that in a free society—which is to say, a liberal society—there will be a multiplicity of authorities, each independent of the others, and sustained by the acquiescence

of its subjects. A liberal society is marked by respect for the independence of other authorities, and a reluctance to intervene in their affairs.¹²

Yet while the concern here is to examine the problem of dealing with diversity by focusing on the problem of the legitimacy of authority rather than on justice, this study differs in an important way from classical approaches to the question of legitimacy. Political thinkers have generally assumed, or asserted, that the world is divided up into nations or dominions, each presided over by some ultimate authority. The problem they have addressed is that of accounting for the legitimacy, and the proper role, of the authority in each one of these closed societies. While they have disputed the basis of legitimacy, they have generally agreed that one important role of political authority is to preserve the *unity* of the state. How, they have asked, can the many be made one? The good society, they have suggested, is a political order marked by a degree of social unity. This work, however, takes a more sceptical attitude to this question, and the assumption that underlies it. Social unity, it suggests, is not nearly as important as has been intimated. On the contrary, the good society is not something confined by the boundaries needed to make it one. Political authority is necessary in any good society; but political authority should be understood as something which has a place in the good society, rather than as something which circumscribes it.

It is a fundamental contention of this book that the good society liberal political theory describes is not a unified entity. Yet in the history of political theory the metaphors which have been used to describe political society have been entirely unsympathetic to this outlook. Powerful though it has been, the metaphor of the 'body politic' has not been a helpful one for liberal thinking insofar as it has encouraged the thought that the existence of social life is dependent upon the functioning of a single political order within which human conduct is organized. The metaphor of a 'well-ordered society' is equally a metaphor that has to be rejected as one which conceives of the good society as a 'closed society' which can be understood as distinct and isolated from other societies. And the most famous of them all, Plato's metaphor of the 'ship of state', is one which has social unity and hierarchy at the very core of its understanding of society. The metaphor presented in this work, however, is one of society as an archipelago of different communities operating in a sea of mutual toleration. Unlike its more famous twentieth-century namesake, the gulag archipelago, the liberal archipelago is a society of societies which is neither the creation nor the object of control of any single authority, though it

¹² My sympathies with (some forms of) anarchism are quite evident. However, it should be made clear that, to the extent that this work is about the nature of the state and its authority, it will be unacceptable to anarchists for failing to condemn the state as incapable of having any legitimacy.

is a form of order in which authorities function under laws which are themselves beyond the reach of any singular power.

Implicit in this is a rejection of nationalism, and of the idea that we should start with the assumption that the nation-state is the 'society' which is properly the object of concern when we ask what is a free society. The liberalism presented, and defended, here is not the liberal nationalism that is standard in contemporary political theory. It is a liberalism built on different foundations, and issuing in different conclusions. One way in which the position developed in this book might be defined is by contrasting it with that of its most important rival: the liberal theory of multicultural citizenship advanced by Will Kymlicka.

Kymlicka's Theory

The most widely discussed and influential contemporary work on liberalism and the problem of diversity is that of the Canadian philosopher, Will Kymlicka. In his book *Multicultural Citizenship: A Liberal Theory of Minority Rights*, he argues that 'the liberal ideal is a society of free and equal individuals'.¹³ But what, he goes on to ask, is the relevant 'society'? The answer he says most people would give is 'their nation'. 'The sort of freedom and equality they most value, and can make use of, is freedom and equality within their own societal culture.' Indeed, he suggests, 'they are willing to forgo a wider freedom and equality to ensure the continued existence of their nation' (MC93). Thus few favour open borders which allow people freely to settle, work, and vote in whatever country they wish, for while this would greatly expand the domain of freedom and equality, it would also increase the likelihood of their country being overrun by settlers from other cultures, thereby endangering their own survival as a distinct national culture. Most people favour 'decreased mobility but a greater assurance that people can continue to be free and equal members of their own national culture' (MC93). Kymlicka concurs; and he also suggests that 'most theorists in the liberal tradition have implicitly agreed with this' (MC93). Like John Rawls, liberal theorists (according to Kymlicka) assume that people are born and are expected to lead a complete life within the same society and culture, and assume that this defines the scope within which people must be free and equal.¹⁴ Or, to put it more bluntly, 'most liberals are liberal nationalists'.¹⁵

¹³ Kymlicka (1995b: 93). (Hereonwards, all references to this work will use the abbreviation MC followed by the page number.)

¹⁴ Kymlicka's references here are to Rawls (1993: 277).

¹⁵ Tamir (1993: 139) quoted in Kymlicka, MC93.

Will Kymlicka is a liberal nationalist. He is also a philosopher who is concerned that, at present, 'the fate of ethnic and national groups around the world is in the hands of xenophobic nationalists, religious extremists, and military dictators', and who believes that, if liberalism is to take hold in these countries (as it should), it must 'explicitly address the needs and aspirations of ethnic and national minorities' (MC195). The task undertaken by Kymlicka in *Multicultural Citizenship* is to develop a theory of minority rights operating within the assumption of liberal nationalism expounded most influentially in recent times by John Rawls. Starting, as does Rawls, from the standpoint of a closed society, he asks what kinds of rights minorities should be granted under the terms of a just—or a free and equal—settlement. Rawls's answer, concerned as it had been with the well-being of the worst off, offered the theory of 'justice as fairness'. Kymlicka's answer, critical though it has been of Rawls's lack of sensitivity to questions of cultural disadvantage, is essentially an attempt to refashion the political theory of Rawlsian liberalism to accommodate the concerns of cultural groups.

The present work is a response to Kymlicka's theory—a critique and an alternative. Although also presented as a theory within the liberal tradition, it offers a very different theory of liberalism. Indeed, it advances a liberal theory which takes a contrary stance to Kymlicka at all the critical junctures of the argument. For this reason it would be useful to set down at the outset an outline of Kymlicka's theory as it is going to be understood, in order to draw attention to the main points of contention. (The critical engagement must wait till the chapters which follow.)

An account of the thesis of *Multicultural Citizenship* should begin by considering the illustration on the jacket of the book. It is a painting (c.1834) called 'The Peaceable Kingdom', by Edward Hicks, and it depicts the signing in 1682 of a treaty between a group of Quakers and three Indian tribes to allow for the establishment of a Quaker community in Pennsylvania. In the foreground is a gathering of animals, both wild (and carnivorous) and tame, the lion and the wolf beside the lamb, resting peacefully as children play among them.¹⁶ Kymlicka chose this painting because it portrays and celebrates a form of multiculturalism he thinks has been ignored. Most discussions of 'multiculturalism' focus on immigrants and the problem of accommodating their ethnic and racial differences—to the neglect of indigenous peoples and other non-immigrant 'national minorities' whose homelands have been 'incorporated into the boundaries of the larger state, through conquest, colonization, or federation' (MCvii). Kymlicka proposes to take

¹⁶ Interestingly, this painting also graces the cover of Jan Narveson's *The Libertarian Idea* (1988).

more seriously not only the claims of indigenous peoples, but also the treaty model of intergroup (and, in particular, majority–minority) relations.

It is this conviction about the importance of indigenous claims that leads Kymlicka to distinguish at the outset two broad patterns of cultural diversity. In the first case this diversity arises from ‘the incorporation of previously self-governing, territorially concentrated cultures into a larger state’ (MC10). These incorporated cultures are called ‘national minorities’, and include ‘American Indians’, Puerto Ricans, Chicanos, and native Hawaiians in the United States; the Quebecois and various Aboriginal communities in Canada; the Maori in New Zealand; and the Aborigines of Australia. In the second case diversity arises out of individual and family migrations of people who form ‘ethnic groups’ in the larger society. While such migrants may want recognition of their ethnic identity, however, they differ from ‘national minorities’ inasmuch as they seek only the accommodation of their cultural traditions, and do not wish to become separate, self-governing nations. A modern state may thus be ‘multicultural’ in either (or both) of two senses of the term. It may be multicultural because it is ‘multinational’, since its members belong to different nations; or it may be multicultural because it is ‘polyethnic’, since its members emigrated from different nations (MC18).

This distinction matters for Kymlicka’s theory because his concern is to develop a theory of minority rights, and because he is convinced that failing to distinguish between the two kinds of minorities—national and ethnic—can lead to misunderstanding, and to unwarranted criticism of multicultural policy. In Canada, for example, the failure to recognize this distinction meant that French Canadians feared that multiculturalism would reduce their claims of nationhood to the level of immigrant ethnicity, while other Canadians feared that it would mean treating immigrant groups as nations (MC17). But once the distinction is adopted, it becomes possible to offer a more nuanced—and plausible—account of minority rights. In his theory of the accommodation of national and ethnic differences, then, Kymlicka argues for three forms of group-differentiated rights: (1) self-government rights; (2) polyethnic rights; and (3) special representation rights. National minorities require self-government rights which, in effect, devolve political power ‘to a political unit substantially controlled by the members of the national minority, and substantially corresponding to their historical homeland or territory’ (MC30). Immigrant groups, however, cannot claim self-government rights, but can enjoy ‘polyethnic rights’, which are group-specific measures ‘intended to help ethnic groups and religious minorities express their cultural particularity and pride without it hampering their success in the economic and political institutions of the dominant society’ (MC31). Language rights would be one example of such a measure; exemption from some legal requirements (such as wearing motorcycle helmets for Sikhs) would be another. Both kinds of

groups may also, in some circumstances, be entitled to special political representation as a temporary measure to deal with the systematic disadvantage or oppression they suffer in their societies.

But would such group-differentiated rights be consistent with liberalism—or, more precisely, with ‘liberal democracy’s most basic commitment . . . to the freedom and equality of its individual citizens’ (MC34)? Kymlicka argues that it is a mistake to think that group-differentiated rights reflect a collectivist or communitarian outlook rather than a liberal one. There are two kinds of rights-claims a group might assert. The first is a claim by the group against its members, and is essentially a right to suppress *internal dissent*; the second is a claim by the group against the larger society, and seeks protection of the group from the impact of *external decisions*. Kymlicka’s argument is that ‘liberals can and should endorse certain external protections, where they promote fairness between groups, but should reject internal restrictions which limit the right of group members to question and revise traditional authorities and practices’ (MC37). What group-differentiated rights are granted, then, depends on whether the particular multinational, polyethnic, or special representation rights in question supply ‘external protections’, or enforce ‘internal restrictions’.

All this is, in Kymlicka’s view, quite consistent with the liberal tradition, which is a tradition with a strong commitment to the protection of minorities. Two major claims underlie a liberal defence of minority rights: ‘that individual freedom is tied in some important way to membership in one’s national group; and that group-specific rights can promote equality between the minority and majority’ (MC52). These two claims require more careful explication, since they take us to the heart of Kymlicka’s theory. In that theory, freedom means freedom of choice, and freedom of choice has certain cultural preconditions. The modern world, according to Kymlicka, is divided up into ‘societal cultures’. A societal culture is a culture which provides its members with meaningful ways of life across the range of human activities—from the economic to the educational and religious. ‘These cultures tend to be territorially concentrated, and based on a shared language’ (MC76). These are ‘societal’ cultures because they comprise not just shared memories or values but also common institutions and practices. A ‘societal culture’ is *embodied* in schools, in the media, in the economy, and in government. National minorities are, typically, groups with societal cultures—albeit societal cultures which they have struggled to maintain in the face of conquest, colonization, and attempts at forcible assimilation. Immigrants, however, have no societal culture (though they may have left their own societal cultures to move to a new land). Societal cultures tend to be national cultures; and nations are almost always societal cultures (MC80). In the modern world, cultures which

are not societal cultures are unlikely to survive, largely given the pressures towards the creation of a single common culture in each country.

Culture is important from a liberal point of view, according to Kymlicka, because it is necessary for freedom. Freedom involves making choices, ‘and our societal culture not only provides these options, but also makes them meaningful to us’ (MC83). For meaningful choice to be possible we need not only access to information, the capacity to evaluate it, and freedom of expression and association, but also access to a societal culture. It is the purpose of group-differentiated rights to ‘secure and promote’ this access (MC84). People generally have strong bonds to their own cultures and, whatever the reasons for this, it has to be accepted. Certainly, says Kymlicka, there is no reason to regret it (MC90). What liberals demand, he says, is freedom for individuals; and this means ‘not primarily the freedom to move beyond one’s language and history, but rather the freedom to move around within one’s societal culture, to distance oneself from particular cultural roles, to choose which features of the culture are most worth developing, and which are without value’ (MC90–1).

Despite any appearances to the contrary, Kymlicka insists, this view is *not* a communitarian one. Communitarians, he thinks, doubt that a politics of the common good can be pursued at the national level. So they emphasize the importance of attachments to sub-national groups—from churches to neighbourhoods. The liberal view, however, ‘objects to communitarian politics at the subnational level’, because to ‘inhibit people from questioning their inherited social roles can condemn them to unsatisfying, even oppressive, lives’ (MC92). Thus:

at the national level, the very fact which makes national identity so inappropriate for communitarian politics—namely, that it does not rest on shared values—is precisely what makes it an appropriate basis for liberal politics. The national culture provides a meaningful context of choice for people, without limiting their ability to question and revise particular values or beliefs. (MC92–3)¹⁷

The implication Kymlicka draws from all this is that liberals should care about the viability of societal cultures; though when such cultures are illiberal, efforts should be made to liberalize them. Immigrants, on the other hand, as (in most cases) voluntary entrants into the national society should not be enabled to develop their own societal cultures, but should be given the resources to integrate (though not necessarily to assimilate) into their host

¹⁷ I should emphasize here that this characterization of communitarianism offered by Kymlicka is a contentious one. Alasdair MacIntyre, for example, denies that he is a communitarian precisely because he believes the modern state lacks the resources to provide us with the appropriate shared meanings (see *After Virtue*—particularly in the final chapter). Equally, other communitarians have argued for the pursuit of the common good at the national level. I discuss Kymlicka’s view further in Chapter 5.

society without having to abandon their own cultural traditions. The liberal commitment to freedom requires nothing less; or more.

But group-differentiated rights are also required by liberal *justice*, and particularly by the liberal commitment to equality. The problem for minorities is that the cultural market-place leaves them at a disadvantage, since their societal cultures may be undermined by the economic and political decisions made by the majority. They may be outbid on resources, or outvoted on issues of policy. Group-differentiated rights of territorial autonomy or representation or language-use can alleviate this problem. They provide 'external protections' whose 'fairness' ought to be recognized, and which are clearly justified 'within a liberal egalitarian theory, such as Rawls's and Dworkin's, which emphasizes the importance of rectifying unchosen inequalities' (MC109).

The view Kymlicka rejects—and attacks—is the view that the state should not interfere in the cultural market place, and should neither promote nor inhibit the maintenance of any particular culture. This response of 'benign neglect' to ethnic and national differences is, he argues, not only mistaken but also incoherent, reflecting 'a shallow understanding of the relationship between states and nations' (MC113). The problem is that there is no way to avoid supporting particular societal cultures, 'or deciding which groups will form a majority in political units that control culture-affecting decisions regarding language, education, and immigration' (MC113). The question of how fairly to recognize languages, or draw boundaries, or distribute powers, must be addressed. And the answer is that 'we should aim at insuring that all national groups have the opportunity to maintain themselves as a distinct culture' (MC113); and at providing some group-specific rights for ethnic minorities (e.g. by granting certain exemptions to Muslims or Jews when working-weeks or public holidays favour Christians).

It is worth reiterating that, in presenting this argument, Kymlicka maintains that his position, far from requiring a revision of liberal theory, is in fact entirely consistent with it. In part this is because the liberal tradition has a history of endorsing group-differentiated rights. But there is a more important reason. Most liberal theorists, Kymlicka suggests, accept unquestioningly that the world is made up of separate states, each of which has the right to determine who may enter and acquire citizenship. Kymlicka believes 'that the orthodox liberal view about the right of states to determine who has citizenship rests on the same principles which justify group-differentiated citizenship within states, and that accepting the former leads logically to the latter' (MC124). The reason is that citizenship, or state-membership, is itself a group-differentiated notion, and liberalism is a view which reserves rights to *citizens*. Of course, sometimes liberal theorists present their arguments in terms of 'respect for persons', or the 'equal rights of individuals'—implying that all persons have an equal right to enter a state and enjoy the goods this might afford. But, in fact, states can refuse entry; and liberalism assumes this is justified, for it does not require open

borders. If, however, liberalism required treating people only as individuals, without regard to their group membership—that is, their citizenship—open borders would clearly be ‘preferable’¹⁸ from a liberal point of view’ (MC125).

Kymlicka thinks that liberalism is premised on the existence of states and citizens; accordingly, he believes that limits on immigration can be justified. The justification is that liberal states exist not just to protect individual rights and opportunities, but also to protect people’s cultural membership. This justification is the same justification offered for the defence of group-differentiated rights within states. What this point brings sharply into focus is the extent to which Kymlicka is, essentially, a liberal nationalist. His theory of multiculturalism is fundamentally a theory of fairness within the liberal state. This is the theory the present work challenges.

The Structure of the Argument

The argument presented in this work is at odds with Kymlicka’s theory (and with mainstream liberalism) in a number of ways. First, Kymlicka’s theory is grounded, ultimately, in the value of freedom of choice, and so rests on a conception of human beings which sees individual autonomy as of primary importance. The theory advanced here, on the other hand, sees freedom of association as fundamentally important and, ultimately, is grounded in the value of freedom of conscience. Second, Kymlicka begins by assuming the legitimacy of the nation-state, and regarding it as the appropriate site of social unity, and so is led to develop an argument about the justice of its institutions and the rights it should recognize. The theory advanced here, however, does not see the question as fundamentally about what conception of justice is appropriate to such a social unity, since it sees the state as no more than a transitory political settlement whose virtue is that it secures civility. Third, Kymlicka argues that the liberal state should promote the integration of groups into the mainstream culture (through its policies on language, education, and citizenship more generally), and his theory is an attempt to specify the principles which should guide policy-making—principles upholding group-differentiated rights. The theory advanced here, however, does not see cultural integration, or cultural engineering generally, as a part of the purpose of the state, and rejects the idea of making the boundaries, the symbols, and the cultural character of the state matters of justice. In this respect it advocates what Kymlicka calls ‘benign neglect’, or what might otherwise be labelled a politics of indifference.

¹⁸ Kymlicka’s use of the word ‘preferable’ here is too weak; the logic of the version of liberalism he is rejecting demands the use of a word like ‘required’.

Finally, the theory presented here, unlike Kymlicka's offers what is sometimes described as a form of 'political liberalism'—unlike the 'comprehensive liberalism' that Kymlicka defends. This distinction, although a relatively recent one in political thought, has come to assume a significant place in discussions of the viability of any kind of liberal theory, so the sense in which the theory offered here is 'political' rather than 'comprehensive' needs to be explained. All forms of liberalism accept that the good society is one that does not enforce upon everyone some particular ideal of the good life but allows different ways to flourish. One of the great attractions of liberalism, it is sometimes held, is that it is neutral among different conceptions of the good life and, so, is a doctrine that all can readily embrace or give their allegiance to. The problem, however, is that even a liberal order is not wholly neutral because, as an order governed by laws, it must make some ways of life more difficult or even impossible. Implicit in the liberal ideal, many of its critics have argued, is a certain conception of the human good—a conception of what kind of life is worth living. In reply to these critics there have been two kinds of response. One kind of response has been to concede the point, and maintain that what is distinctive about liberalism is the peculiar conception of the good it upholds—one in which such things as the freedom or autonomy of the individual are held paramount. The political philosophies of Kant and Mill, for example, may be regarded as instances of such a liberalism, resting as they do on 'comprehensive' accounts of the nature of the good for individuals.¹⁹ The other response, however, has been to argue that a comprehensive conception of liberalism would fail to accomplish—because it abandons—the task liberalism sets itself: providing an account of a political order that could command the acceptance of all, irrespective of their moral commitments or ideals of the good life. Any plausible liberalism, it has suggested, had to be a 'political' liberalism—one which described a political order which was not hostage to a particular 'comprehensive' moral doctrine.

The problem for any 'political' liberalism, however, is that it remains true that no political doctrine which is devoid of moral content can, in the end, be a normative doctrine of any kind. The distinction between 'comprehensive' and 'political' liberalism therefore cannot plausibly be one between moral and non-moral theories. Nor can it even be a distinction between a theory that makes assumptions about the nature or interests of human beings and one that does not. Every political theory must do so. If it does not, it will not be able to appeal to any reasons that a person or a group could be motivated to

¹⁹ Not all liberals hold autonomy to be an unqualified good. For a modern view of liberalism as a theory of the human good see Galston (1980, 1991).

embrace.²⁰ What distinguishes ‘political’ liberalism from ‘comprehensive’ doctrines, then, is that it tries to establish liberalism as a *minimal moral conception*.²¹ The theory advanced in this work defends a kind of political liberalism not because it makes no assumptions about human nature or human interests. On the contrary, it tries to account for what is important for all human beings in order to explain why a liberal political order (of the sort described in these pages) is one that all persons can have sufficient reason to accept. But it tries to do so without appealing to the substantial moral conceptions some liberal thinkers have tried to uphold.

To present this argument the book is divided into six chapters. Chapter 1 outlines the conception of liberalism that lies at the core of the book. Liberalism, it argues, is a doctrine of toleration rooted in a respect for freedom of association and, ultimately, liberty of conscience. More generally, this chapter tries to explain what a society which could be described as liberal would look like. Yet this chapter offers, in the end, only a sketch of the conception of liberalism defended in the book. The philosophical theses implicit in this conception need fuller elaboration as well as further support. This is the task of the next two chapters.

Chapter 2 addresses the fundamental assumptions made by the theory about human nature and human interests. The ultimate purpose of this chapter is to lay the groundwork for an argument about how human beings can live freely under conditions of diversity. Since this argument is intended to range over all human societies, rather than over some particular historical example, it is important to begin with an account of what it is that humans have in common. It considers human nature and the motives that govern human conduct, and argues that the most important feature of human conduct is its attachment to the claims of conscience. It is this aspect of human nature that reveals what is preeminent among human interests: an interest in not being forced to act against conscience.

Chapter 3 explains why freedom of conscience is the appropriate starting point if freedom of association is taken as vital. It tries to account for why freedom of association and liberty of conscience make a society a free society. Chapter 4 then takes up the question of the connection with toleration, explaining why it is that a free society should tolerate all kinds of associations, including those which do not themselves seem to value freedom or abide by the principle of toleration, and which seem to embrace practices

²⁰ Akeel Bilgrami has argued persuasively that any plausible theory must appeal to reasons ‘internal’ to the agent or community, rather than to ‘external’ reasons. This means appealing to some substantive value or values the agent or community accepts. See Bilgrami (1997: 2527–40).

²¹ The phrase is Charles Larmore’s, taken from his ‘Political Liberalism’, in Larmore’s (1996: ch. 6, 133). My understanding of political liberalism is greatly influenced by Larmore’s discussion.

which are intolerable. This chapter will make clearer what kind of social order a regime of toleration should produce.

This, however, will bring us to the question of the place of the state in such an order, and the conception of a political society that is implicit in this version of liberalism. And with that come questions about political institutions and public policy. These problems are tackled in Chapters 5 and 6. Chapter 5 presents an account of the view of political community which comes out of the view of liberalism already articulated, and tries to explain the basis of the state's legitimacy. It also argues that the claims of nationality are not an important consideration in trying to understand the basis of political society. Chapter 6 then goes on to elaborate upon why this requires not only a limited state but also one that is not involved in the cultural construction of the society.

The book closes with some more general reflections on the nature of this conception of the state and of the political order more generally. It also considers why, in spite of its taking issue with so much of contemporary liberalism, the position defended here deserves to be regarded as a liberal political theory.