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A New Notion of Culture in Liberal Multiculturalism: Alan Patten and His Critics

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1 Introduction

Since the latter half of the twentieth century, indigenous peoples' movements and the tide of refugees to the EU have shown that oppression of cultural minorities by cultural majorities and the resentment of cultural minorities against the oppressiors have become more intense. Recently, there have been conflicts not only between majorities and minorities, but also among minorities. Multiculturalism has become one of the most important issues.

In political theory, Kymlicka's collective rights theory has been a central issue in the debate over multicultural issues since the late twentieth century. Although traditional liberals focus only on individual rights, Kymlicka argues that we need not only individual rights, but also collective rights, as individual rights are not enough to protect people. He focuses on culture and argues that collective rights are essential in order to protect minority cultures. Recently, new multiculturalists have challenged this view. For example, Joseph Carens points out that Kymlicka considers mainly regular immigrants who live in the host country in the long term and argues that notions of culture should be broadened so that temporary workers, irregular immigrants, or refugees are also given collective rights.[2] Susan Okin points out that the collective rights Kymlicka presented work against the human rights of women or children, so-called internal minorities, and argues that it is necessary to protect them.[3] These issues surrounding collective rights are among the most important issues in liberal multiculturalism today.[4]

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2 Joseph Carens, *The Ethics of Immigration* (New York: Oxford University Press, 2013).

3 Susan Okin, "Is Multiculturalism Bad for Women?," in *Is Multiculturalism Bad for Women?* Joshua Cohen, Matthew Howard, and Martha Nussbaum (Princeton, NJ: Princeton University Press, 1999), 7–24.

4 For important research that deals with these issues, see, e.g., Anthony Laden and David Owen, eds., *Multiculturalism and Political Theory,* (Cambridge: Cambridge University Press, 2007); Fumihiko Ishiyama, "Will Kymlicka and Multiculturalism

In this paper, I critically reexamine the notion of culture, which is one of the basic conceptions regarding multiculturalism, using Alan Patten's new theory as a vantage point. In discussions on liberal multiculturalism, Kymlicka's major theoretical categories, including his of culture, have long been seen as the most standard formulations, and theorists tend to discuss only about the concrete rights or policies that follow from his theoretical formulations. It is obvious that Kymlicka's concept of culture is still the standard formulation because the most advanced researchers in multiculturalism, such as Cecil Laborde or David Miller, start their discussions from Kymlicka's theoretical formulations.[5] However, Patten rethought theoretical formulations such as definition of culture or neutrality and developed the collective rights theory. He criticizes Kymlicka's notion of culture and suggests that Kymlicka does not consider the collective rights of temporary workers or refugees who do not have common languages and live together. Unlike Kymlicka, Patten presents a new notion of culture where members of cultural groups share a common process of socialization. Thus, Patten is one of the most promising theorists in liberal multiculturalism, and it is necessary to examine his theory when attempting to rethink collective rights theory in liberal multiculturalism.

I proceed as follows. In Chapter 2, I compare Kymlicka's critiques of traditional liberalism with the critiques of liberalism by other major theorists such as Joseph Carens. In Chapter 3, I explore Patten's concept of culture and its significance through consideration of his new "social lineage account" theory. In Chapter 4, I examine the possible objections to Patten's theory. To be more concrete, I address three possible objections to Patten: the possibility that Patten's idea of culture extends to too broad a range of agencies without any restriction; the possibility that Patten's notion of culture ignores the fact of cultural change; and the possibility that Patten's notion of culture erroneously tries to explain the cultural belongingness of individuals by free will alone. My argument in this paper is that, whereas Kymlicka presented an institutionalized notion of culture that emphasizes shared institutions such as language or schools, Patten presents a relational notion of culture that focuses on relationships among members of cultural groups. Finally, I conclude that this relational notion of culture that focuses on formative process of culture overcomes the limits of traditional liberal multiculturalism.

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5 Cecile Laborde, *Liberalism's Religion* (Cambridge, MA: Harvard University Press, 2017), David Miller, *Strangers in Our Midst: The Political Philosophy of Immigration* (Cambridge, MA: Harvard University Press, 2016).

2 Kymlicka's Notion of Culture: Its Strength and Weakness

2.1 Liberty, Culture, and Neutrality

Kymlicka starts from the fact that most liberal thinkers have long conceptualized cultures as unrelated to the liberty of individuals. According to him, liberals argue that "the self is prior to its socially given roles and relationships" (CCP: 208)[6] and dismiss any relationship between individual liberty and culture. However, Kymlicka emphasizes that culture is inseparable from individual liberty. He explains that "freedom involves making choices amongst various options, and our societal culture not only provides these options, but also makes them meaningful to us" (MC: 83). In addition, under the premise that "we lead our life from the inside, in accordance with our beliefs about what gives value to life" (MC: 81), Kymlicka argues that we can modify our choices if we find mistakes or change our mind about the choices we have already made. People select "from a context of choice which provides us with different ways of life" and "the range of options is determined by our cultural heritage"(LCC: 165).

What is the notion of culture that Kymlicka employs in thinking about his theory of state protection of cultures? He defines cultures that can be objects of procection as "a territorially-concentrated culture, centered on a shared language which is used in a wide range of societal institutions, in both public and private life (schools, media, law, economy, government, etc.)" (PV: 25). Kymlicka calls these cultures "societal culture." He presents national minorities and polyethnic states as the most typical examples. He argues that national minorities are "groups who formed functioning societies on their historical homelands prior to being incorporated into a larger state" and demand to sustain their own institutions (PV: 54)[7]. In contrast, polyethnic states are more relaxed groups that are formed through the bringing together of immigrants. They desire to "modify the institutions and laws of the mainstream society to make them more accommodating of cultural differences" (MC: 11).

Kymlicka advocates collective rights being given not to individuals but to

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6 The abbreviations in this thesis are as follows:
CPP: Will Kymlicka, *Contemporary Political Philosophy: An Introduction 2nd ed.* (New York: Oxford University Press, 2002).
PV: Will Kymlicka, *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship* (New York: Oxford University Press, 2001).
MC: Will Kymlicka. *Multicultural Citizenship* (Oxford: Oxford University Press, 1995).
RC: Alan Patten, "Rethinking Culture: The Social Lineage Account," *American Political Science Review* 105, no. 4 (2011): 735–749.
JMLR: Alan Patten, "Survey Article: The Justification of Minority Language Rights," *The Journal of Political Philosophy* 17 (2009): 102–128.
ER: Alan Patten, *Equal Recognition: The Moral Foundations of Minority Rights* (Princeton, NJ: Princeton University Press, 2014).
LCC: Will Kymlicka, *Liberalism, Community and Culture* (New York: Oxford University Press, 1989).

7 Kymlicka recognizes that group-differentiated citizenship is included in collective rights. Strictly speaking, he labels self-government rights, polyethnic rights, and special group representation rights as group-differentiated citizenship. However, as Kymlicka admits, the rights that Kymlicka defines as group-differentiated citizenship are called collective rights by both proponents and critics of group-differentiated citizenship. In this thesis, I label such rights collective rights because it is better to call them collective rights in order to compare them with the theories of other thinkers.

groups in order to protect societal cultures, which are essential for individuals belonging to these groups to enjoy liberty.[8] This is because minority societal cultures, in comparison to other cultures, are more likely to decline or disappear. Kymlicka argues that "some forms of cultural difference can only be accommodated through special legal or constitutional measures, above and beyond the common rights of citizenship" and "some forms of group difference can only be accommodated if their members have certain groups-specific rights" (MC: 26). According to his theory, individual rights are not enough to realize equality of culture, and collective rights are necessary for complementing individual rights. The right to self-governance, fishing rights for national minorities, language rights, and exemptions from certain laws for polyethnic groups are given as examples (MC: 15, 38, 44).

Kymlicka points out that the traditional liberalism fails to shed adequate light on significance of culture, which is necessary for the realization of liberty. However, according to him, this is not the only problem with traditional liberalism. Kymlicka also refers to the unfairness of the neutrality that existing liberalism supports. According to Kymlicka, traditional liberals tend to think that "states should not interfere with the cultural market-place–it should neither promote nor inhibit the maintenance of any particular culture" (MC: 108). He criticizes the fact that these traditional liberals equate the neutrality of a nation with benign neglect,[9] and giving collective rights in states that adopt benign neglect is contradictory to traditional liberalism because states are forbidden to support any societal cultures (MC: 110).

However, Kymlicka points out that all nations need to support some societal cultures regarding the language that is used for politics, law, or public education. Therefore, benign neglect is not useful when it comes to language. Kymlicka adds that "one of the most important determinants of whether a culture survives is whether its language is used as the language of government —i.e. the language of public schooling, courts, legislatures, welfare agencies, health services, etc." (MC: 111). On the one hand, he argues that if a government adopts a lauguage, this policy ensures that the language transmits the tradition that is related to that language. On the other hand, if a government does not support any minority language, the government ends up marginalizing minority languages. In short, when a government has to choose the language that is used in public, "the idea that the government could be neutral with respect to ethnic and national groups is patently false" (MC: 110-111).

Features of Kymlicka's notion of culture can be summarized in the following two points. One feature emphasis on its institutionalization of culture. Kymlicka supposes that people who share a common language live together and they are

8 One of the most significant problems of collective rights theory is the conflict between collective rights and individual rights. However, according to Kymlicka, collective rights are not always exercised by groups. He argues that collective rights are mostly exercised by individuals (MC: 45). For example, although language rights are given to groups, it is individuals that actually enjoy them. In addition, for Kymlicka, it does not matter whether an agent of rights is an individual or group.

9 Kymlicka indicates that liberals since the Middle Ages have not opposed minority rights normatively. Kymlicka argues that modern liberals add a new norm that allows only universal individual rights, and modern liberals disagree with minority rights according to the new norm. Kymlicka argues that the arguments of modern liberalism as such are contrary to the tradition of liberalism (MC: 68).

institutionalized under common social institutions. Based on this definition, he regards a national minority with high group institutionalization as a typical example of cultural groups and refers to the rights of polyethnic groups whose extent of institutionalization is flimsy as less typical examples.

Another feature of Kymlicka's notion of culture is its essentialist nature. Kymlicka understands that people consciously choose to belong to their cultural groups and continue consciously to support to their social institutions. He failed to consider the possibility that the intentions of cultural group members change constantly or the possibility that members of cultural groups act on various interests other than culture, such as immigration to improve their economic environment. As a result, Kymlicka falls into an essentialist interpretation of culture where members of cultural groups share the intention to support common social institutions and behave in such a way to realize these intentions.[10]

2.2 The Limits of Kymlicka's Theory

Kymlicka justified collective rights from a liberal perspective and established a foundation for collective rights theory. At the same time, however, many critics have pointed out the various limits of his theory. For example, there are problems regarding the narrowness of scope of the claimant or agent of collective rights or problems regarding the treatment of internal minorities that collective rights oppress, such as women or children, who hardly have any voice.[11] In this article, I focus on the narrow scope of the agent of collective rights.

We can easily understand this problem by examining his argument on French speakers of Quebec. According to Kymlicka, the case of French speakers in Quebec is addressed as one of the most typical examples of cultural minorities. They are entitled to cultural rights because they meet conditions such as common languages and living together. He does not discuss in depth the possibility that Canadian government grants rights to cultural groups other than French speakers in Quebec. Therefore, cultural groups that have a societal culture are limited to quite a narrow scope. This narrowness of the agent of collective rights is criticism of the scope of from those who wish to expand its scope to short-term or undocumented migrants in addition to permanent-resident foreigners. Joseph Carens, for example, attempts to defend freedom of movement from the perspective of open borders and points out that there are some cultural groups that Kymlicka's theory based on common social institutions cannot adequately theorize. Carens Suggests that liberal states

10 From the perspective of feminism, Anne Phillips argues that such essentialist interpretations of cultural notions can harm the rights of women or other vulnerable groups in society. Anne Phillips, *Multuculturalism without Culture* (Princeton, NJ: Princeton University Press, 2007).

11 A problem regarding internal minorities, who are socially vulnerable people such as women or children, is that Kymlicka's theory assumes that members belong to a group voluntarily and that cultural groups are homogenous. For example, feminist political philosopher Susan Okin points out that collective rights oppress women or children who hardly have any voice. She argues that marriage systems that disturb women's self-determination, such as child marriage or forced marriage, are established in social institutions. Therefore, she insists that collective rights protect the social institutions containing such an unjust system and oppress women. Okin, "Is Multiculturalism Bad for Women?," 17.

are required to grant collective rights to various groups that do not have common institutions or live together, such as temporary workers, irregular immigrants, and refugees, in addition to the groups that Kymlicka highlights.[12]

Carens' argument about temporary workers demonstrates the features of his theory clearly. He pays attention to the fact that temporary workers, to whom Kymlicka did not refer, are not granted essential rights and are actually treated unfairly by nations.[13] For example, Carens points out that they might be forced to work under bad conditions because of different standards from permanent residents. He argues against nations actually setting a double standard. He observes that temporary workers or irregular immigrants form close relationships with their neighbors in their communities. He argues that the longer they stay in the nation, the stronger their intention to stay there becomes. Therefore, Carens advocates nations being required to give equal rights to every person within their borders, including non-permanent residents, regardless of their background.[14] He proposes respecting not only human rights or the right to work, but also cultural rights, because culture is a part of identity.[15] Carens concludes that Kymlicka—in his early works—ignored the importance of collective rights for temporary workers.[16]

In response to his critics, Kymlicka later classified cultural groups into national minorities, polyethnic groups, isolationist ethnoreligious groups, metics, and African-Americans.[17] However, this classification still centers on the notions of societal culture, and Kymlicka fails to provide any clear grounds for collective rights for cultural groups that do not share common institutions and live together. Particularly, he clearly admits that the grounds for collective rights for African-Americans are weak: "African-Americans … do not fit the voluntary immigrant pattern, not only because they were prevented (rather than encouraged) from integrating into the institutions of the majority culture. … Nor do they fit the national minority pattern, since they do not have a homeland in America or a common historical language. … The situation of African-Americans, therefore, is virtually unique (CCP: 360)." In sum, Kymlicka could not show any adequate grounds for collective rights for cultural groups other than national minorities and polyethnic groups, and he tried to deal with them as cases that deviated from his own notion of

12 Carens, *The Ethics of Immigration*, 63.

13 Kymlicka recognizes that illegal immigrants or temporary workers do not apply to both national minorities and polyethnic states. However, Kymlicka argues that illegal immigrants or temporary workers can be treated the same as polyethnic states regardless of their self-recognition when they immigrated because they eventually wish to be integrated into the mainstream. Therefore, Kymlicka focuses on the typical two groups of national minorities and polyethnic states (PV: 58–59).

14 Carens, *The Ethics of Immigration*, 159.

15 There are other theorists who argue for open borders. Michael Blake argues that states should not behave arbitrarily but should base their actions on the four universal norms of liberalism. Blake takes into account the possibility that states judge arbitrarily and argues the necessity of universal norms to the fullest extent. Finally, based on these norms, he advocates broadening the range of agents of rights. Michael Blake, *Justice and Foreign Policy* (Oxford: Oxford University Press, 2013), 50.

16 Joseph Carens, *Culture, Citizenship, and Community: A Contextual Exploration of Justice as Evenhandedness* (Oxford: Oxford University Press, 2000), 63.

17 CPP: 348–365.

culture.

3 Patten's New Notion of Culture

3.1 The Social Lineage Account as a New Notion of Culture

Let us now examine Patten develops collective rights theory as a premise for Kymlicka's theory. Patten begins by stating that Kymlicka's problem starts with his definition of culture. Patten points out that the existing definitions of culture, including Kymlicka's, have been understood in an essentialist way. He notes that "essentialism consists in the identification of kinds in the natural or social world through the singling out of some relevant property (or set of such properties) that are possessed by all and only the individuals who belong to that kind" (RC: 736). Thus, the existing definition of culture makes us understand cultural groups as groups with a fixed essence and does not allow for a variety of values in the group or internal variation. It also does not allow the possibility that culture changes or shares something in common with other cultural groups, because the members shift from one culture to another or have overlapping membership.[18] These essentialist interpretations of culture create problems such as the limited claimant or agent of collective rights or the possibility of oppression of internal minorities.

In order to escape from the essentialist definition, Patten seeks a different approach that does not define culture itself but understands culture by focusing on the process of cultural formation. Patten points out that "members of a group that can trace back through time a lineage of cultural continuity do share something that others do not share. They share with one another a common experience of socialization that is distinct from, because historically isolated from, the experiences of socialization undergone by others" (RC: 741). He defines his own concept of culture as "the relation that people share when, and to the extent that, they have shared with one another subjection to a set of formative conditions that are distinct from the formative conditions that are imposed on others" (RC: 741). He calls it the "social lineage account."

Patten argues that the social lineage account acknowledges the heterogeneity within cultural groups, to which the essentialist definition does not pay attention. The fact that people are subject to a common formative condition does not mean that people share homogenous beliefs or values. It is like how siblings are influenced differently even though they grow up in a common environment. In addition, the social lineage account is compatible with differences within groups and overlapping of cultural affiliation across cultural borders. Individuals are subject to the cultural formative project they share, but they are also under the influence of multiple other

18 Patten points out that, if we adopt the essential definition of culture, only the members of the groups are required to have specific beliefs or values. Patten also refers to the change of culture with the passage of time. Under the essential definition, a culture ceases to exist whenever the members revise or abandon their beliefs or values. Patten argues that the definition is contrary to the fact that culture is inherited across generations (RC: 738).

cultural affiliations and influences. Through these influences, people share cross-cutting cultural ties even when there is a formal cultural border between them or they have different ethnicities. Therefore, the social lineage account makes it possible to explain overlapping, interactional, and mixed cultural affiliations (RC: 742). Unlike Kymlicka, who adopts an institutional and homogeneous notion of culture, Patten pays attention to the common process of socialization among members of cultural groups and presents a relational notion of culture that focuses more on various cultural groups.

3.2 Broadening the Range of the Agent of Collective Rights

As we have discussed so far, Patten criticizes Kymlicka's adoption of the essentialist interpretation of culture and presents a new notion of culture that focuses on the process of cultural formation. How does Patten argue that his own notion of culture can extend the claimant or agent of collective rights? He explains the advantages of his new notion by comparing it with the way in which Kymlicka treats various cultural minorities with his own notion of societal culture. Patten starts with the fact that Kymlicka' notion of societal culture focuses on cultural groups that that share common institutions or language and live in a common place. As we have already discussed, French speakers in Quebec are one typical example. They are recognized as an agent of cultural rights in Kymlicka's theory because they live in common places and share common social institutions composed of the French-speaking population.

However, Patten points out that Italian immigrants in the US are not likely to be eligible for claiming cultural rights under Kymlicka's theory. This is because, in most cases, they do not live in a particular area in the US. They need to share English speaking institution with the majority of US. Therefore, they are not given cultural rights. Kymlicka's theory cannot ensure that they have the cultural right to speak Italian (JMLR: 112).[19] Although Kymlicka notes the existence of various cultural groups other than national minorities and polyethnic groups, he fails to provide systematic justification for their collective rights. Kymlicka's notion of culture is related to problems regarding the narrow scope or agent of collective rights.

In contrast, Patten's theory can endorse the rights of Italian speakers. The reason is that the social lineage account does not require that they live together and share a common language and social institutions (RC: 742). The immigrants from Italy can be eligible for cultural rights when they share a formative condition under Patten's theory. Therefore, temporary workers and short-term immigrants are also included in the groups eligible for cultural rights in addition to national minorities and permanent-resident foreigners (ER: 64).

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19 There may be a doubt as to whether the immigrants from Italy in this context comprise a polyethnic group. However, Kymlicka does not posit that states give polyethnic groups the same collective rights as those given to national minorities because he recognizes that polyethnic groups are willing to live in mainstream society. In contrast, Patten postulates that both national minorities and polyethnic groups can enjoy equal rights.

3.3 The Context of Choice and Intrinsic Value of Culture

Patten not only extends the agencies of collective rights but also amplifies the discussion from the perspective of strengthening the justifications of collective rights. Kymlicka justifies the necessity of protecting cultural minorities on the ground that cultures provide necessary choice in human lives, and this theory has been commonly accepted. In contrast, Patten argues that the importance of cultural rights is based not only on the fact that culture provides choices, but also on the fact that culture itself has intrinsic values. How does Patten defend collective rights by combining the value of culture as choice and the intrinsic value of culture?

First, Patten accepts Kymlicka's view that culture provides choice. According to Patten, the options for cultural minorities "are significantly worse when their culture fares poorly than they are when the culture survives and flourishes" (ER: 70). The more people share their own culture, the easier it is for them to select their own culture. Therefore, in order to secure appropriate choices for members of cultural minorities, it is necessary to protect minority cultures. Likewise, Patten thinks that cultural minorities cannot exercise their free choices of lifestyles when minority cultures decline. He defines this as "options disadvantage." Patten agrees with Kymlicka on the point that culture has value as it provides essential choices in human lives.

However, Patten further notes that if we try to explain the value of culture only from the perspective that it provides choice, we confront the following problem. If we adopt Kymlicka's theory that culture is valuable only as a provider of choices, it is not a problem if cultural minorities lose their original culture so long as another culture provides decent choices (ER: 75). For example, based on Kymlicka's theory, there is no need to protect the cultures of polyethnic groups as long as they are ensured access to the necessary capacities or skills for life, such as languages (ER: 83). It is quite difficult to justify cultural protection for cultural minorities, especially polyethnic groups, only from the perspective of culture-providing choices.

Patten argues that it is essential to focus on the more intrinsic roles and values of culture that work when a culture realizes individual identity, in addition to the fact that culture provides choices. According to him, cultural protection is justified from the perspective of protection of identity because individuals have been attached to their cultures and that attachment is closely related to their own identity. Indeed, if individuals are treated disrespectfully, it is difficult to distinguish the disrespectful treatment of their culture as collective values from the disrespectful treatment of them as individuals (ER: 96). Patten focuses on the relationship between culture and identity and argues that intrinsic value can also be a justification for cultural protection.

There might be a criticism of Patten's argument regarding the relation between cultural protection and the willingness of the members of minority culture. His argument seems to lead to the conclusion that a minority culture must be maintained in any situation because the minority culture is closely related to the identities of members of that minority culture. At first glance, this conclusion seems

to be in the same position as Kymlicka's argument that cultural protection is essential because it is costly to leave their own culture and is actually impossible to do so (MC: 86). However, Patten clearly differs from Kymlicka. Patten emphasizes whether members of minority cultures have the substantial choice to maintain their own cultures over whether cultures survive or succeed in the end. Patten does not deny assimilation only if individuals voluntarily waive cultural rights. Therefore, Patten concludes that states must protect minority cultures as far as individuals do not waive their cultural rights voluntarily. Kymlicka supposes that cultural loss always arises non-voluntarily and regards cultural protection as its own end. In contrast, Patten distinguishes voluntary and non-voluntary cases of cultural loss and argues for the necessity of cultural protection in order to avoid only non-voluntary cultural loss (ER: 72).

Patten recognizes both the instrumental value that culture has by providing choice and the intrinsic value of culture as directly linked to identity as cultural values. This interpretation of the values of culture strengthens the justifications for collective rights. In addition, if we adopt Patten's position, decisions on the contents and extent of collective rights for each cultural group depend on the spontaneous will of cultural group members in each situation, because whether cultural loss is permissible or not depends on the spontaneity of cultural group members. Patten's notion of culture recognizes the values of culture and strengthens the justifications for protecting minority cultures. In addition, he aims to establish a theory based on the fact that members of minority cultures do not always hope to maintain their own culture and judges the extent of cultural protection based on context.

4 Critical Examinations of Patten's Notion of Culture

Patten has tried to overcome the problems with Kymlicka's notion of culture. However, it seems that there are some plausible objections to Patten's notion of culture. In this chapter, I focus on three main criticisms and try to respond to them.

4.1 Criticism of the Scope of Agent

The first criticism is that Patten's theory broadens the varieties or scope of cultural minorities who are granted cultural rights without any restriction. As we considered in the previous chapter, Patten does not define culture itself and adopts the social lineage account that focuses on the formative process of culture. Therefore, compared to Kymlicka's theory, Patten's cultural definition is fluid and cannot specify the ranges of cultural groups who are eligible for the claims of cultural rights. It is true that this fluid definition allows Patten to overcome the limits of the narrow definition of Kymlicka's theory by extending the range of cultural groups to temporary workers or irregular immigrants; however, Patten's theory is subject to the objection that it extends the range of cultural groups eligible for cultural rights too broadly. It seems that he can include any types of very minor cultural groups

without any limits.[20]

Patten seems to avoid this objection by presenting a concrete criterion to narrow the scope of agent of cultural rights. He points out that one important requirement for a group to be regarded as eligible for cultural rights is that it has to go through a process of cultural transmission. He demonstrates this point when he defines the extinction of culture as a situation in which "there is a significant disruption of the process by which the culture is transmitted from existing members to new generations and other newcomers" (RC: 739). According to this explanation, the abandonment of a specific culture by just one member does not break the entire process of cultural transmission, and cultures disappear only when most members choose to abandon their culture at the same time. Patten presents several conditions regarding cultural continuity when he further explores the process of cultural extinction. He argues that an institution or practice regarding socialization is controlled "if members of that group occupy most of the key positions of power and responsibility in that institution or practice, and/or if most of the other participants are incipient members of the cultural group in question" (RC: 740). He stipulates that the decisive factor for cultural continuity is control of the socialization process of new generations by existing members of the cultural group. Patten confines the legitimate cases of cultural right claims to those groups who fit this definition (RC: 740).

Compared with Kymlicka, Patten's notion of culture relaxes the conditions to be recognized as a legitimate claimant of collective rights. At the same time, Patten's judgement of whether a group exists depends on whether there is historical continuity where cultures have succeeded across generations and a situation where cultures have been transmitted from generation to generation. Patten does not take institutional standards such as living together and sharing languages. Instead, he judges whether a group exists based on the standard of sharing the process of cultural transmission. Therefore, although Patten's notion of culture is more fluid than Kymlicka's, it has some restrictions and can limit the scope of the agents or groups who are eligible for the claims of cultural rights.

4.2 Criticism of Cultural Continuity and Change

Second, I will examine how sensitive Patten's theory is to cultural change and how it can accommodate cultural mobility. This issue is one of the most important criticisms not only of Patten's theory, but also of the entire discussion on multicultural theory. When we examine existing literatures of minority cultural protections, there is a strong tendency for the theorists to protect cultures as they are, without any changes to its content. Hence, it is quite likely that Patten's notion of culture might not be able to deal with cultural change. Even though culture in itself changes its contents over time, multicultural theorists cannot shed an adequate light

20 Levy points out that there are various types of collective right such as exemption, self-government, external rules, internal rules, recognition, representation, and symbolic claims. Levy argues the necessity of classifying the rights. Jacob Levy, "Classifying Cultural Rights," in Will Kymlicka and Ian Shapiro, eds., *Nomos XXXIX: Ethnicity and Group Rights* (New York: New York University Press, 1997), 25.

on cultural change if they focus too narrowly on the preservation of culture as it is. Indeed, one of the most typical criticisms of essentialist interpretations of culture such as Kymlicka's notion of culture is that they make the explanation of cultural change quite difficult because they define culture as a fixed entity. In what follows, I show how Patten's notion of culture can explain cultural continuity and change through a comparison of Kymlicka's notion of culture with Patten's.

First, I examine how Patten criticizes Kymlicka's idea of cultural change continuity. As I have already discussed, the notion of societal cultures, which Kymlicka presented as his concept of the culture, is regarded as an institutionalized notion of culture in that societal culture requires its members to live in a particular area and share social institutions such as languages. For instance, it is generally assumed that both French culture, circa 1800, and French-Canadian culture, circa same date, were continuations of French culture, circa 1600. However, if we employ Kymlicka's institutionalized notion of culture, these three cultures do not have continuity with each other because they are deemed not to have the same institutions(RC: 738). According to the institutionalized notion of culture, cultures are regarded as the same ones when they meet the condition that both maintain the same institutions. Therefore, under the institutionalized understanding, it is difficult to explore the issues of continuities of cultures so long as the institutions of the culture always changes over time.

In contrast, Patten does not employ essentialist notion of culture. He acknowledges that two cultures can be deemed continuous when a cultural transmission process between generations is maintained in the cultural group, even if the features or contents of cultural institutions have changed (RC: 738). Therefore, according to Patten's social lineage account, cultures are deemed to have continuities even if the institutions of culture have changed over time. In his theory, both French culture and French-Canadian culture, circa 1800, were continuations of French culture, circa 1600, because all of the three cultures share a common process of transmission. Thus, Patten overcomes the difficulties of Kymlicka's institutionalized notion of culture without defining the contents of culture. He judges continuities of culture by the existence of a transmission process.

Second, Patten introduces a new perspective that can overcome the limits of Kymlicka's understanding of cultural change through the discussion of "cultural loss," which means that individuals leave their own culture and assimilate into a new one. Both Kymlicka and Patten regard cultural loss as a phenomenon that is unjust in principle, and they admit the necessity of protection of cultural groups that are confronted with cultural loss. However, Kymlicka differs from Patten in that Kymlicka regards cultural loss as a case in which members of a minority culture are forced to assimilate into a mainstream culture by external pressure. He argues that a case that members of a minority culture are assimilated voluntarily is not unjust, and that such a case is not cultural loss (MC: 104). Therefore, according to his argument, if assimilation into another cultural group is regarded as their own decision, protection of a minority culture is not necessary even if they are, *ipso facto*, forced to

be assimilated because of their background such as poverty.[21]

In contrast, Patten maintains that "migration, economic change, rising literacy, access to new media and forms of popular culture, improvements in transportation and communication, and other broad social changes of this kind all have a tendency to expose people to new formative influences" (ER: 49), and argues that cultural loss can happen when members of a minority culture pursue a better environment. In addition, he argues that cultural loss should be judged not by whether members of a minority culture select the result, but by whether there is a transmission process between generations. In this way, the disappearance of the transmission process is considered to be the cultural loss. It is essential to compensate cultural groups whose transmission process between generations is endangered. Therefore, Patten's theory requires liberal states to compensate for the cultural groups whose background conditions such as poverty are ignored and whose cultural loss are not compensated within Kymlicka's theory.

After presenting his new understanding of unjust cultural loss, Patten develops his theory by considering some cases where cultural loss is justifiable. He argues that cultural loss is justifiable when minority cultural members have decided to leave their cultures by themselves even though they have received adequate level of protection from the majority society. In such a case, it is difficult to avoid cultural loss because it is violation of free will of the minority members to leave their own culture and assimilate into majority culture (ER: 102).

Although the idea of justifiable cultural loss seems to be inconsistent with protection of cultural minorities at first glance. However, Patten limits his cases by adding some conditions. According to him, minimal protection is essential. Government must ensure protection for each cultural group that does not exceed the appropriate "baseline" (ER: 115).[22] If cultural loss happens under such protection, it is not unjust. It is because members of cultural minorities spontaneously leave their own culture even though they have appropriate range of choice. Kymlicka and Patten share the common idea that it is essential to compensate for cultural groups that are faced with crisis of cultural loss. However, according to Patten, cultural loss is permissible only when cultural minorities are secured the minimal support to survive. He tries to overcome the problem of essentialism that it gives too much support to cultural minorities that do not desire to maintain their own culture. Patten's theory balances cultural protection and cultural change.

4.3 The Limits of Free Will and the Necessity of States

We have shown so far that Patten's explanation of maintenance and abandonment of culture rests on whether there are mutual relationships within the groups such as processes of socialization and of cultural transmission. He

21 For important research that deals with choice and responsibility by free will regarding cultural rights, see Chandran Kukathas, "Are There Any Cultural Rights?," *Political Theory*, 20, no. 1 (1992): 105-139.

22 In his discussion of states' neutrality, Patten calls this guarantee of minimal support a "baseline," and ensures it (ER: 115).

presupposes that members of cultural groups are naturally engaged in relationships such as the socialization process or transmission process in their group and advocates the necessity of cultural protection. This means that his notion of culture focuses on free will of the members of the group so long as the process of socialization and cultural transmission requires active and willful commitment on the part of the individual members. However, is it enough to explain cultural preservation and abandonment only by free will? Although Patten himself does not make any clear statement about this issue, we can find his general line of argument in his discussion of Kymlicka's famous dichotomy between immigrant and national minority. In what follows, I will examine how Patten responds to such issues as the preservation and abandonment of culture from his perspectives of free will.

Let me start my discussion by outlining the dichotomy that Kymlicka presented. Kymlicka presupposes that all members of polyethnic groups immigrate to the received country voluntarily. By contrast, he adds that a national minority is annexed involuntarily and argues that the state has a responsibility to respond to their claims of culture or language (MC: 101). However, he argues that immigrants abandon their culture voluntarily even though they have an option to stay in their own culture. He insists that the assimilation of immigrants is consistent with the demand of justice if the receiving state assimilates them (MC: 95–96).

There had been various criticisms of this formulation by Kymlicka well before the arrival of Patten's theory. For example, Carens argued that immigrants do not always move to the receiving state voluntarily.[23] He added that all residents and formal citizens should be allowed to enjoy rights if they have lived in the state for several years. He regarded temporary workers, irregular immigrants, and refugees as rights holders in addition to naturalized people and permanent residents.[24] Although these arguments by Carens helped to broaden the scope of cultural groups who enjoy rights, Carens did so without considering the principled definition of what makes a group eligible for cultural rights.

Patten extends these criticisms by presenting the following three conditions as criteria for a justifiable decision to assimilate on the part of immigrants: "voluntariness," "alienability," and "recipient's permission." First, Patten attempts to judge the voluntariness of abandoning cultural rights on the basis of the benefits and burdens to migrants when they do so. He argues that we must consider the degree of the burdens when migrants abandon a particular cultural right. If the burden is as light as they can endure, we can assume that migrants abandoned their cultural rights voluntarily (ER: 281). In addition, he argues that we need to consider how strong the pressure from the receiving state is when migrants decide to abandon their cultural rights. If there is no room for immigrants to refuse it, the choice is not deemed to be voluntary (ER: 281).

Second, Patten also considers the possibility of voluntarily abandonment of

23 Carens, *Culture, Citizenship, and Community*, 81.
24 Carens, *The Ethics of Immigration*, 159.

cultural rights based on the degree of toleration shown by the receiving state. He argues that, in an environment where immigrants can learn the language and the basics of the lifestyle of a receiving state and the receiving state tolerates them, minorities can find the appropriate range of options necessary to enjoy freedom in the societal culture of the receiving state. He defines these cases as migrants' alienability cases, where migrants are considered to be able to voluntarily abandon their original community (ER: 248). If these two conditions are satisfied, the third "recipient's permission" condition matters. This means that "the receiving society is morally permitted to make the surrender of cultural rights a condition of admission to immigrant status" (ER: 272).[25] Patten permits the prioritization of claims by national minorities over those of immigrants (ER: 295–296).

To sum up, Patten sets strict criteria for the justifiability of polyethnic groups' alienability and interprets the voluntariness of alienability in a quite limited way. Contrary to the inclinations to free will at first glance, Patten increases the role of states in the respect that the authenticity of free will is judged not only by individual will but also by each concrete context.

5 Conclusion

I have examined how Patten succeeds at including more varied cultural groups as agents of collective rights than Kymlicka through his social lineage account. Consequently, I indicated that Patten's new notion of culture, which focuses on social relationships, extends the scope of the agent of collective rights to temporary workers or refugees and strengthens the justification for their rights. Thus, Patten tries to overcome the limits of traditional liberal multiculturalism by reconstructing the notion of culture that traditional liberals had understood as a premise. The new notion of culture focuses on sharing processes of socialization among members of cultural groups. This position is quite different from Kymlicka, who presents an institutional notion of culture. Because Patten focuses on the relationship between members of cultural groups, his notion of culture can be called a relational one.

Based on that feature of Patten's notion of culture, let us address the following two tasks related to liberalism and multiculturalism. The first task is examining the role that states should play. This article illustrates that the voluntariness of individuals to belong to a culture is judged by states in the relational notion of culture. Thus, Patten's relational notion of culture increases the role of states and can permit states to make arbitrary decisions about cultural protection. Therefore, we need to examine the relationship between the relational notion of culture and Patten's view of

25 Patten argues that if these three conditions are met, the renunciation by immigrants of cultural rights is regarded as just. However, if immigrants are forced to immigrate by economic reasons and so on, they cannot make decisions freely. In this case, immigrants have no choice but to waive their cultural rights when they cannot enter the received states with their cultural rights. He argues that these situations are unjust and there is no need for immigrants to fulfill such promises (ER: 279–281).

states. From this perspective, it is necessary for us to examine Patten's new notion of neutrality, because he discusses fair and equal conditions among citizens in terms of cultural protection not under the concept of the state but primarily under the concept of state neutrality.

The second task is examining the relationship between the relational approach in the general theory of justice and Patten's relational notion. Recently, the relational approach has emerged not only in multiculturalism but also in the general theory of justice.[26] Although Patten himself adopts a relational approach in his notion of culture, he does not consider how his relational approach to cultural justice can be related to the general theory of justice. In addition, thinkers who have adopted a relational approach to the theory of justice have not responded to Patten. Thus, an examination of the relationship between Patten's notion of culture and traditional liberalism requires a dialogue between them from now on, and in that sense, Patten's theory suggests many important future issues.

26 For example, thinkers who adopt a relational approach in the theory of justice include Elizabeth Anderson, Samuel Scheffler, and many other thinkers. Elizabeth Anderson, "What Is the Point of Equality?," *Ethics* 109, no. 2 (1999), Samuel Scheffler, *Equality and Tradition: Questions of Value in Moral and Political Theory* (New York: Oxford University Press, 2010).