

The Right to Preserve Culture

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Abstract

Although a supposed right to preserve culture is frequently invoked in normative debates, philosophical literature has produced scarcely any attempt to treat it as a particular claim that differs from other cultural rights and that, for that reason, is in need of a particular justification. Only by clarifying the content and the normative reasons underlying the supposed right, however, is it possible to evaluate the numerous political claims that have been based on it, ranging from the protection of minorities to restrictions on immigration into nation states. This article argues that the right to preserve culture should be seen as the right of a cultural group to enjoy the framework conditions and to enact supporting political measures that make it likely that its culture will continue to exist through an authentic and continuous path of development. Although some of the possible justifications of that supposed right fail, there is an approach that makes it at least plausible that the right to preserve culture is justified within certain limits.

Keywords

Cultural rights; group rights; immigration; majority rights; minority rights

Whether preserving culture should be regarded as a legitimate political aim, or even a moral right of cultural groups, is heavily disputed. Preserving culture forms the basis of several political movements, it is a catchword in discussions about the rights of indigenous peoples and immigration, and it is frequently used in the context of international law. Whilst some view it as an important claim of cultural groups, others insist that preserving culture should not play any role in politics. Importantly, the controversies around preserving culture are not limited to public discussions: Academics also use the expression 'preserving culture' or allude to related notions. It is worth emphasizing that they do not always *criticize* the political abuse of the term, but in many cases *affirm* the concept as the foundation of a moral right or a set of moral rights. However, the precise meaning and normative relevance of preserving culture are underdeveloped in philosophy and political theory. The term is generally used as a vague byword in broader discussions on cultural rights and identity politics, as are the related terms 'cultural defence' and 'protection of culture'. Rather than devoting a conceptual discussion to the particular properties of the supposed

right of a group to preserve its culture, most authors do not distinguish such a right from other cultural rights.¹

As a consequence, existing approaches generally fail to offer a particular justification of the right to preserve culture and its specific features, although one is urgently needed if the idea of preserving culture is to maintain a place within normative reasoning – not least because many writers emphatically deny the existence of any such right.² In what follows I will first offer a conceptual discussion of what the right to preserve culture involves, and then go on to address the normative question of whether and how it can be justified.

The argument will proceed in four steps. Firstly, I will unravel the strands of the normative debate about cultural rights by demarcating the right to preserve culture from other types of cultural claims. In the second section, I will elaborate on what this right involves in detail, as a basis for enquiring into possible justifications. Therefore, thirdly, while acknowledging that traditional value-based justifications fail to justify the specific features of the right to preserve culture, I will identify an approach that provides a plausible foundation based on the interests that arise from the agents' perspective. Finally, in the fourth section, I will consider some objections which lead me to conclude that, although a case can be made for the right to preserve culture, it nevertheless has limited relevance for political questions.

1) Untangling the debate on cultural rights

¹ Some examples of passages in which preserving culture is alluded to but not thought through are the following: Carens (2000: 202) claims that he will defend policies that aim to preserve culture, but what he actually goes on to justify is according cultural attachments special consideration as a means of achieving social equality (see also Carens, 2013: 339); Wall (2007: 256) touches on the issue, but is ultimately concerned only with enabling people to have 'vital options' that are bound to particular cultures, not with preserving cultures over time; also De Clerq (2017) does not distinguish between preserving culture over time and being able to live according to one's culture; Jovanović (2012) discusses the preservation of culture, but he does not make clear how preserving culture is related to his 'value collectivism' – the value of the existence of a group is surely different from the value of preserving culture; Orgad mentions cultural preservation only when discussing the views of others (see, e.g., 2015: 15; 129; 160), but as soon as he begins to defend his own view, he no longer refers to the concept (2015: chap. 5). An exception is Patten who has a distinct conception of cultural preservation and argues (in contrast to this paper) that there is no general right to preserve culture (2014: 102).

² Scheffler (2007), Kukathas (1992) and Benhabib (2002: chap. 3) deny the existence of such a right; many writers from the political left seem to exclude the very possibility that such a right might exist from the outset.

Let me begin by briefly introducing the two most important contexts in which philosophers write about cultural rights and the supposed right to preserve culture. Cultural arguments were first raised in academic debates on minority rights in the context of multiculturalism. Assuming that states are entitled to make majority decisions regarding the collective aims of communal life, minorities are at risk of being dominated by the majority culture. This, in turn, led to discussions about special claims of minorities to the protection of the satisfaction of their cultural needs, as well as the distinctness of their culture as a whole.

However, recent developments in political philosophy have shifted the focus to a second context. Many writers deny that the nation state has a right to decide who should be entitled to immigrate and call instead for open borders. Thus, defenders of ‘closed borders’ are faced with the task of justifying the right of states to restrict immigration, and some have appealed to the concept of culture, claiming that the *majority* within any state is entitled to protect its culture.³ According to this view, when faced with global migration, the majority culture in a state is vulnerable in a similar way to minority cultures who are faced with domination by the majority culture within a state (Orgad, 2015: chap. 5).

So, considering these two contexts of academic debate – multiculturalism and migration – what are cultural rights about? First of all, they presuppose that there are such things as *cultural groups*. Each group has a cultural identity, that is, a sense of mutual belonging in virtue of their shared culture, even if this sense is only weakly developed.⁴ Mere classifications (e.g. the group of all people who share an arbitrary list of cultural elements such as having cornflakes for breakfast, speaking English and loving Mozart) do not demarcate cultural groups in the common-sense meaning of the term, since the individuals thus demarcated do not share a sense of identity or mutual belonging.

The culture that is shared by the members of a cultural group and forms the basis of its cultural identity may consist of different components on the level of ideas (such as values, conventions, symbolic codes, or religious convictions) and practices (such as lifestyles, religious rituals, style of dress, cuisine, or language). Every cultural group in the sense that is relevant here shares *many* of these components on both levels.⁵ As Margalit and Raz (1990: 443, see also 448) put it, the identity-establishing culture encompasses “many, varied and important aspects of life” –

³ See esp. Miller (2016: chap. 4), Pevnick (2011), Walzer (1983: chap. 2), De Clerq (2017).

⁴ See Benhabib (2002: chap. 1) for a critical analysis of cultural identification.

⁵ By defining cultural groups in this way, I follow a version of the approach Lenard (2020) calls ‘culture-as-encompassing-group’.

groups that share only a few cultural elements are not sufficiently vulnerable to conditions of group setting and therefore are not potential bearers of the types of claims we are discussing.⁶

There is no particular component that must be shared in order to be a cultural group in the relevant sense – each cultural group will have their own components that are commonly shared and establish a sense of belonging. Therefore, cultural groups can tie their identity to any profound set of non-biological⁷ properties that is able to mark differences between groups of human beings. There is no reason to exclude any set of non-biological properties from the scope of culture from the outset or to restrict the notion of a cultural group to groups that, in addition to a common cultural identity, dispose of certain institutional or social capabilities.⁸

Although cultural groups develop an identity through their shared culture, they are not completely homogenous entities, and usually exhibit a certain degree of internal cultural pluralism. Indeed, the cultures of modern nation states are *fundamentally* pluralistic. In addition to the pluralism within cultural groups, it is clearly not the case that each individual can be assigned to only *one* culture. Each of us may have several cultural affiliations – local, national, religious and ethno-cultural – and which of them is relevant depends on the context.

These characteristics of the concept of culture make it appear extremely broad and even vague. Some philosophers have argued that the vagueness of the concept implies that cultural affiliations are normatively insignificant (Scheffler, 2007; Gutmann, 2015; see also the discussion in Patten, 2014: chap. 2). Broadness and vagueness, however, do not prevent one from using a concept to raise normative claims, as can be seen from the fact that many of our central normative concepts

⁶ I will leave open whether collectives that do not count as cultural groups in the sense presented (such as the collective of cornflakes eaters or the group of Marxists) might rely on claims to preserve the cultural components they share.

⁷ Some cultural groups seem to involve biological properties, such as the ‘deaf culture’ that, according to some, only people who are deaf can be members of (I owe this observation to an anonymous reviewer). However, upon closer examination it turns out that what binds these groups together is something non-biological: not every deaf person is a member of the deaf culture (a deaf person who never had contact with other deaf persons certainly is not), and when talking about the deaf culture in contrast with the group of all deaf people, being deaf must be seen as a biological precondition of sharing certain common experiences, where the latter is itself a non-biological property.

⁸ Prominently, for Kymlicka, cultural groups only have rights if they are ‘societal cultures’ that provide life options across the full range of human activities, so that, in particular, nations count as cultures but many minority groups do not (1995: 76). For a critique of that conceptual restriction, see, e.g., Patten 2014: 64.

are broad and vague. And since the practice of ascribing a cultural affiliation to oneself and to others undeniably exists, we should at least try to make sense of the talk about cultures.

Although culture itself is a rather non-normative concept (Scheffler, 2007: 119), culture can be the object of normative claims. There are countless political claims concerning how culture should be recognized. In my view, we can avoid much confusion in discussions of normative claims concerning culture if we distinguish between four possible basic claims regarding culture. Firstly, cultural groups could raise the claim to *self-determination* – either self-determination as a separate state, or some partial self-determination within a state. Secondly, there is the claim that states have a right to maintain or promote a certain amount of *cultural homogeneity* within their territory. Some writers defend the right of states to close borders on this basis, because they consider cultural homogeneity to be a prerequisite of social trust or of political identity (see Pevnick, 2011: 154–161). Thirdly, cultural groups could raise a claim that they should be able to live according to their culture, and to do so without unreasonable disadvantages. Among others, this claim covers the demand to be granted some special rights to resources and particular conditions that are required to practice one’s culture, and the demand for rules that prevent one from being socially disadvantaged or suffering a denial of recognition due to one’s cultural affiliation (Song, 2007: chap. 3). Fourthly, there is the claim that groups have a right to *preserve* their culture, that is, to maintain the existence of the cultural group as well as of the culture that the group shares over time. The main difference between the third and the fourth kinds of claims is the temporal aspect of the fourth kind. It is one thing to say that a group of people who *have* specific requirements to live according to their culture have a right to have these requirements provided, and quite another to say that the same group has a right to take measures that perpetuate these requirements over time and ensure that the next generation has similar lifestyle habits as well.

These four basic claims must not be identified with the particular political demands we are faced with in real life politics, but should be regarded as possible claims which underpin these demands. Take the demand of a native tribe to settle within a territory that is closed for settlers of other cultures. That demand could be made on the basis of any of the four claims: the tribe might wish to live in a closed territory because it values self-determination as an end in itself, or because it wants to live in cultural homogeneity, or because it wants to ensure that it is able to express its culture, or because it wants to live in conditions that make it likely that its culture will be maintained over time – or, of course, because of a mixture of these reasons. Thus, political demands are usually based on one or more of the basic claims.

When reflecting on these multiple political demands philosophically, however, we have to single out the moral considerations on which they are based and scrutinize each of them independently. Indeed, the validity of each of them is largely independent of the validity of the

others. One can believe that all of them are valid, but also that only some of them are valid, while the others lack normative justification. In particular, there could be valid claims concerning special requirements of cultural groups to live according to their culture even if there is no valid claim to special measures that serve to preserve their culture over time. For example, one could without contradiction argue that the Amish should be granted the specific resources they need to lead their traditional way of life without granting them the right to pass their way of life on to the next generation by excluding their children from public schools.

The independence of the four basic claims is limited when we consider the self-determination of cultural groups. A cultural group might claim the right of self-determination as an end in itself, but often it will do so *because* of one or more of the other three claims regarding culture. Thus, the self-determination of cultural groups could be of value because decision-making units should be culturally homogeneous, or because the cultural group is at risk of being denied its special requirements to live in accordance with its culture, or because it has a right to preserve its culture.

Similarly, the right to self-determination can also provide a justification for pursuing the objects of other basic claims. If self-determination is justified for some reason, a cultural group might use its right to self-determination to promote some of the aims that are objects of the other cultural claims. If cultural groups were granted a right to self-determination on the grounds that decision-making units should be culturally homogeneous, then the self-determining group might, for example, be free to enact laws designed to preserve culture based on the political autonomy of the self-determining group. In that case, a group's right to enact laws to preserve its culture does not have independent value, but derives its value from another right. It is important to note that, in what follows, I am concerned with the right to preserve culture only as an *independent* moral concept that is not just a side effect of a right to self-determination justified on some other grounds.

Of the four basic claims, the claim to preserve one's culture is by no means a minor one. Charles Taylor (1994: 61) once wrote that the survival of their culture is what the members of cultural groups 'really aspire to', and I believe that there is some truth in this assertion both as regards cultural minorities and the dominant cultures of nation states. However, despite its political importance, philosophers have not yet fully explored this particular idea of preserving culture over time as opposed to other cultural claims. Therefore, in what follows, I would like to explain in detail what the right to preserve culture involves before offering a justification of that right.

2) What does the right to preserve culture involve?

If there were a moral right to preserve culture, what exactly would that mean? Let us assume for a moment that the right to preserve culture is a *group right* in the sense that not individuals, but only groups can have that right. Which groups could possibly be the subjects of that right? Since we all

have multiple cultural affiliations and the boundaries of cultural groups are porous, we cannot divide the human population into fixed cultural groups each of which has a right to preserve its culture. Moreover, there is no evident reason for according any one level of cultural division (for instance, the nation) priority over the others. Instead, *any* group of people that, in the sense I introduced above, has to be regarded as a cultural group could potentially be the bearer of this right, be they a subnational group (such as the Bavarians), a national group (such as the French), a cultural-religious group (such as the Amish), and so on.

It is important to note that cultures are always in a state of flux. There is no culture that remains unchanged. The world is continually changing due to the influence of new technologies, political events, and so on, just as the individual members of cultural groups are continuously changing. As a result, cultures must inevitably change, too. Indeed, the members of a cultural group keep their culture alive by continually reinterpreting and adjusting traditional values and practices. As Scheffler writes: 'Survival [of a culture] is successful change' (Scheffler, 2007: 108).

Thus, when speaking of the right to preserve culture, we should not understand the term 'preserving' in the sense of 'keeping unchanged'. Although that meaning often features in populist rhetoric, a right to preserve culture in the sense of the 'right to keep culture unchanged', would be a right to something that is empirically impossible. However, this does not imply that speaking of a right to preserve culture does not make any sense *at all*. Instead, when we speak of preserving culture, we do not mean avoiding change, but avoiding certain kinds of changes.

One possible approach is an essentialist conception of cultural changes, according to which each culture is defined by a set of essential properties that are preserved across all manifestations of the culture over time. But such an essentialist account is implausible from the outset: how would we determine which parts of culture are essential and which are not?

Instead, let us focus not on the essentials of a culture, but on particular features of the *process* of cultural change. Two features can be used as benchmarks when considering whether a certain culture has been preserved or has survived, namely authenticity and continuity.

The process of cultural change is authentic, if it is the result of desires and decisions of the members of the culture, or of decisions that are willingly accepted by the members, whether through democratic affirmation or implicit acceptance. Thus, the authenticity criterion rules out both a process guided by non-members and one imposed by an elite within the cultural group that implements cultural change through force. If cultural change occurs because of demands from occupation forces, or because political leaders so impose changes without at least implicit consent by the group, cultural change is not authentic. The same holds when minorities are forced to assimilate into the broader culture of a nation state, or when the immigration of large numbers of non-

members of a cultural group causes public life to develop in a direction of which the members do not approve.

The continuity criterion demands that cultural changes must not occur so rapidly and with so much loss of traditional content that the new ideas and practices are no longer recognizable as reinterpretations of the earlier ones. In a continuous development, in any given moment, a culture remains similar to the culture that immediately preceded it. Continuity means that, though in the long run culture might change immensely, there is no moment of disruption.

In order to say that a culture has been preserved, both criteria are necessary. If we believed, firstly, that the continuity criterion was unnecessary, we would reduce the scope of the right to preserve culture to a right to self-determination, and would thereby lose the distinctive feature of cultural preservation, namely that the culture itself continues to be exhibited by the members of the group. Suppose a cultural change has occurred because of voluntary decisions by the members, but in a disruptive way, say, as a consequence of the invention of a new technology that changed life immensely. Although in that case the group cannot accuse outsiders or a powerful elite of having effected that change, we should not say that the culture has been preserved, and the group might rightly regret the cultural disruption.

Suppose, secondly, that a cultural change occurs continuously, but is guided by a small elite or by outsiders and goes against the will of the group's members. In that case, the members of the group will feel alienated – they will deny that the current culture is a continuation of *their* culture, but will see any change as deviation from their actual culture. This is true even when the oppressive elite aims to conserve traditional patterns and, say, prescribes the exhibition of certain cultural elements against the will of the group's members: the coerced continuation of traditions fundamentally changes what the traditions are in the eyes of the group's members.⁹ Only an authentic development is a development where the unavoidable change in the cultural life is interpreted as reinterpretation and a continuation of, rather than a deviation from, the former stages.

⁹ For a similar view, see Scheffler 2007: 109. One might object that, at least in some sense of the term 'preserving culture', culture might be preserved by such oppressive means, since there is sufficient continuity in the group's culture and its identity. However, this is certainly not the sense of preserving culture that groups rely upon when they articulate a right to preserve their culture: the aim of these groups is not to be forced to exhibit cultural practices they dislike.

Hence, these two features together capture what people mean when they raise claims to preserve culture.¹⁰ They are both necessary to say that a culture has been preserved, and since I rejected essentialist approaches, they are also jointly sufficient (no additional conditions need to be fulfilled).

Of course, my description still relies on vague concepts: cultural changes cannot be measured and classified according to hard criteria, and sometimes it is only a question of interpretation whether a particular cultural change represents a continuous development rather than a disruption. However, there are sufficient examples of cultural disruption in recent history about which there is a *consensus*. There is surely widespread agreement that displacements of peoples have often brought about cultural disruption, as have the coercive assimilations of minorities that have accompanied the processes of nationalization all over the world. Moreover, there are cases in which immigration has disrupted native cultural developments, the most prominent modern example being the migration of Europeans to the Americas. In all these cases, cultural change was neither brought about authentically by the members of the cultural group, nor did it occur as a continuous development.

If the core of preserving culture is to maintain an authentic and continuous process of reinterpretation and adjustment of ideas and practices, what then does a *right* to preserve culture involve? To define a right essentially means to define which duties correspond to that right. It seems hard to imagine duties whose fulfilment brings about the mentioned process. One might therefore think that the right to preserve culture does not have an appropriate object: no individual or

¹⁰ At the same time, they cover what has been touched upon in the literature; see Carens (2000: 234), Miller (2016: 63), Patten (2014: 45–48). Although most of my claims are compatible with Patten’s discussion of cultural preservation and his nonessentialism, I differ from him in several substantial respects. Patten’s “social lineage account” defines cultural groups not through a shared culture, but through a “shared subjection to a common formative context” (2014: 39), in which institutions and practices must have “sufficient formative impact on individuals” (57). In my view, whether institutions have sufficient impact to count as establishing a cultural group (think about diaspora groups that only share weak informal institutions) can be answered only by examining whether the institutions have a shared culture as an outcome, so for a group to be a cultural group a shared culture is more fundamental than shared institutions. As a consequence of his account, Patten sees a culture as being preserved if the cultural group has “control” (2014, 47f.) over the formative institutions, independently of cultural changes that will occur. That way, he includes a criterion similar to my authenticity criterion, but he rejects the necessity of continuity of the shared culture – in his view, a culture is preserved even if the group voluntarily decides to educate the next generation in an international language and without any of the specific customs and traditions that have been shaping the group for years. Such a scenario might be unrealistic, but a conceptual analysis should account for unrealistic scenarios, too.

collective can be obliged to perform the complex process of preserving culture. Thus, the right in question cannot be the right of a group to require particular people to perform specific culture-preserving actions, nor, of course, to require them to choose a traditional way of live.

However, there is another way to define the object of the right to preserve culture: the right to preserve culture can instead refer to the *framework conditions* that enable the process to occur in the first place, and to the implementation of *political measures that plausibly promote that process*. The right to preserve culture is, in a strict sense, not a right effectively to preserve culture, but a right to enjoy the framework conditions and enact supporting political measures that make it *likely* that culture will develop in an authentic and continuous process. Corresponding duties demand the creation, promotion, or acknowledgement of these framework conditions and the support for these political measures.

Here I cannot examine in detail what these framework conditions look like and which political measures actually promote the continuation of a culture. It is sufficient to establish that, whenever a cultural group raises a political claim based on the right to preserve culture, it has to demonstrate that the object of that claim belongs to the framework conditions of cultural conservation, or that it is a political measure which makes it likely that certain elements of its culture will survive. It seems plausible that the framework conditions include stable political conditions, a certain collection of resources, and in many cases sovereignty over a territory; among the potential political measures are restrictions on immigration, language policies, education policies, and subsidies for cultural organizations. Some of these examples, e.g. stable political conditions, are linked to both authenticity and continuity, others promote more directly authenticity (e.g., territorial sovereignty and border control) or continuity (e.g. subsidies for cultural organizations).

Needless to say, the right to preserve culture, like most rights, is a *prima facie* right and the corresponding duties are *prima facie* duties. Nowhere in the debate is cultural preservation conceived as an absolute right. If it is a right at all, it is one with limited force which can be overruled by further normative considerations in many cases. Thus, to say that a group has a right to preserve its culture is not to claim that the group in question is actually entitled to enact immigration restrictions, or the like. It is only to claim that a case can be made for producing framework conditions and enacting political measures that make it likely that a culture will be preserved. In many cases, cultural groups will have to accept that central elements of their culture will not survive.

Following Raz's approach to rights, we can assert as an interim result that a right to preserve culture exists if, and only if, some people have a *prima facie* duty to respect, create or promote the framework conditions and the political measures which make it likely that a culture will develop in an authentic and continuous way. We are now in a position to address one of the central problems posed by the analysis of the right to preserve culture, namely whether it is a group right or instead

consists in a set of individual rights. Those who affirm a right to preserve culture in some form usually regard it as a group right, whereas some critics emphasise that individual rights are sufficient to address the moral problems generated by conflicts between cultural groups (Kukathas, 1992; Waldron, 1995). According to them, people are free to take measures to preserve their culture insofar as their individual rights allow them to do so, no more and no less.

Individual rights are undoubtedly of supreme importance when it comes to preserving culture. As we have already established, cultures are in a constant state of flux and are preserved through successful reinterpretation and adoption by each successive generation. Individual freedom is an important precondition for this process: without individual freedom, cultures are at risk of losing acceptance among their members (Scheffler, 2007: 109). Furthermore, many states explicitly acknowledge that parents, within certain limits, have a fundamental right to educate their children according to their culture, if they so desire. The parents' freedom to educate their children in their culture is essential for the preservation of that culture (Rorty, 1995).

If the normative requirements of preserving culture were exhausted by individual rights, this concept would add nothing new to liberal thought, and it would not be necessary to affirm the preservation of culture as an independent moral claim in normative discussions. However, advocates of the right to preserve culture typically claim that it involves certain elements that are not covered by individual rights (Jovanović, 2016). Individuals usually enact their culture in a group setting, and whether a culture will survive is more dependent on that group setting than on individual actions. The framework conditions and political measures linked to the right to preserve culture include self-determination, control of borders, and public policies, none of which can be adequately addressed through individual rights. Thus, what we are searching for is a *group right* to preserve culture – a right of a group of people who share a certain culture and cultural identity.

According to Raz, a group right is a right that exists because the interests of the group members jointly justify holding some person(s) to be subject to a duty, whereas the interest of no single member of that group is sufficient by itself to justify holding another person to be subject to a duty (Raz, 1986: 208). So defined, the group right relies on interests of individuals, but the bearer of the right is the whole group and no single individual.

It seems plausible that a single person's interest might be sufficient to justify requiring others to respect her personal freedom and her freedom when it comes to educating her children. Thus, although personal freedom and freedom in education are essential for preserving culture, they are not components of the group right to preserve culture – rather, they are individual rights. If there is a

group right to preserve culture, then it must be based on some common interests of the members that *only jointly* justify holding other people to be subject to a duty.¹¹

Group rights might correspond, on the one hand, to duties of members of the group and, on the other, to duties of non-members. Firstly, consider the following example of possible duties of outsiders. As already mentioned several times, the right to preserve culture could justify closing borders to immigrants. If so, the right to preserve culture implies the duty of outsiders to accept closed borders. Presumably, no single individual's interest in the continuance of her culture justifies a general duty of all outsiders not to set foot in the territory of a certain state. So, if there is a right to close borders based on preserving culture, that right must be a group right.

Secondly, consider possible duties of members of the group. These duties rely on the fact that culture, since it consists of ideas and practices *shared by a group* of people, in order to survive might call for collective actions and decisions that potentially require individuals to contribute efforts or resources. Cultural preservation might require, for example, public subsidies for certain activities or the inclusion of certain subjects and issues in the public education curriculum. We should not expect complete consensus amongst the members of the cultural group about which activities should be subsidized or about which issues should be included in the school curriculum. Instead, the democratic process is generally regarded as an acceptable means for arriving at these decisions. Thus, there will be people whose preferences will be overruled and whose taxes will be used for purposes they themselves do not support. There may be other justifications for such majority decisions. But if there is a right to preserve culture, the normative situation could be analysed as follows: No single individual's interest in the continuance of her culture is strong enough to place other members of the cultural group under the duty involuntarily to subsidize certain activities. However, the interests of many members of the group jointly have some normative force that could justify requiring those who are outvoted to adhere to cultural promotion policies resulting from democratic decisions.¹² In that case, the right of the cultural group as a whole against some of its members is derived from the fact that the interests of those numerous members of the group who

¹¹ My position resembles that of Margalit and Halbertal 1994, who also rely on Raz 1986. However, they go on to adapt Raz's definition in such a way that individuals can also be bearers of the 'right to culture', although that right is 'effective' only if there is a sufficient number of individuals who share the interest in that culture (1994: 501).

¹² Somewhat similar views are held by Jovanović (2012: 143) and Patten (2020: 547f). Jovanović argues that the claim that group rights could override individual rights necessarily presupposes 'value collectivism' (2012: 146). This is not true because, in order to justify restrictions on individual rights, it is sufficient that the group right has value for a large number of its individual members.

endorse the policies in question jointly justify some members of the group having a duty to accept the policies.

Since the right to preserve culture is a *prima facie* right, I am not going to claim that majorities within cultural groups are free to choose whatever they like – on the contrary, my position is fully compatible with the view that the voices of those who are outvoted have to be taken seriously, and that individual rights in general have greater weight than group rights. However, in principle a group right to preserve culture can be seen as counterbalancing individual rights when it comes to the question of what groups can demand from their members based on majority decisions. For instance, the group right might entitle the majority of the group to use part of the tax revenue to promote some cultural element – the interests of many members of the group in promoting that element might jointly be weightier than the interest of some individuals in having sovereignty over how to spend the taxes they paid. The group might, however, not be entitled to oblige individuals to participate in certain cultural events. In that case, the weight of the individual right to freedom of action trumps the group's interests.

Let me condense the argument thus far into a definition of the right to preserve culture:

The right to preserve culture is a *prima facie* moral right possessed by a cultural group to enjoy the framework conditions and enact supporting political measures that make it likely that its culture will follow an authentic and continuous path of development.

Corresponding to such a right, members and non-members have a *prima facie* moral duty to respect, create or promote the existence of those framework conditions and the realization of those political measures.

In the light of the recent literature on cultural rights and protective politics, it is as important to specify what the right to preserve culture entails as it is to identify what it does *not* involve. Firstly, the right to preserve a certain culture is not a right to preserve an existing injustice. If some components of a culture are unjust, their injustice is a *prima facie* reason to abandon them, and not to preserve them.¹³ In these cases, if the members of a cultural group want to adhere to their culture, they have a duty to search for means to revise it in a manner compatible with justice. Secondly, the right to preserve culture is not a right to preserve the *dominance* of that culture. It is important to emphasize this distinction because there has been an influential attempt to argue for a general claim to dominance (Orgad, 2015: chap. 5). None of the possible arguments for preserving

¹³ See especially the debate about whether cultural rights are bad for women (Cohen/Howard/Nussbaum, 1999).

culture I will go on to present justifies preserving the dominance of a culture, and whoever wants to defend that stronger view incurs an immense burden of proof. In particular, focussing on *values*, there could be such a case for preserving dominance. Imagine a society in which there is a dominant group whose members share the ideal of gender equality, and a second group of people who do not share that ideal. The first group might have a right and perhaps even a duty to preserve their dominance under certain circumstances – for example, to close their borders in order not to be overwhelmed by immigrants who are hostile to that ideal.¹⁴ However, the normative power of this argument relies on the normative power of the universal value of gender equality. As the right to preserve culture refers to all components of cultures in general, regardless of these components being universally defensible values, the right to preserve culture cannot be based on the normative power of particular of its components. Therefore, any debate on dominance of values should not proceed in terms of cultural preservation.

I concede, however, that preserving the dominance of a culture might be a side effect of preserving a culture. If a culture loses its dominance, it will often undergo a profound change in character, and some of these changes might even be perceived as the destruction of parts of that culture. For this reason, preserving the dominance of the culture might be a prerequisite of preserving culture under certain circumstances.¹⁵ Yet, efforts to preserve dominance are likely to be criticisable in the light of further normative considerations, e.g. because they tend to reinforce structural injustices.

3) Possible justifications for the right to preserve culture

Is there a case to be made for such a right to preserve culture? I will begin with a classical differentiation between various justifications of such a right that attribute some *value* to the

¹⁴ However, this should not simply be taken for granted. Firstly, immigrants often adopt the values of the societies into which they have migrated. Secondly, closing borders will not convince anyone to embrace gender equality; even if those who do not share a belief in gender equality are not present in a certain territory, they continue to exist, and possibly continue to suppress women. So if there is an argument for dominance, it is that a certain distribution of people with false moral beliefs is better than an alternative distribution – a world in which the value of gender equality is dominant in one state and oppressive attitudes towards women are dominant in another is better than a world in which oppressive attitudes towards women are dominant in both states (all other things being equal).

¹⁵ This might be true, in particular, in the case of languages of small linguistic groups that will only survive if they are dominant on a certain territory. Arguments like this are beyond the scope of the present paper.

preservation of culture. I will then go on to present what I believe is the most promising approach, which does not fit easily into the classical picture.

3.1) Value-based justifications

In line with what I have said before, I am not going to defend particular cultures on the grounds that they contain particular values. If there is a value-based case for the preservation of culture, then it applies *prima facie* to all cultures. If we adopted the perspective of impartial observers of what happens in the world, then we could value the preservation of cultures intrinsically, without reference to other values or personal interests. Either we could argue, following Walzer, that preserving culture means preserving a world with distinct cultures because, if the different social groups did not preserve their culture, then all cultures would converge into a uniform global culture.¹⁶ Or we could argue that each culture should be preserved as an end in itself, so that the mere fact that a certain culture exists gives us, as impartial observers, a reason for wanting it to continue to exist. According to this view, it is more desirable to preserve the existing culture than to replace it with some other culture of equal value, and sometimes it is even more desirable to preserve the existing culture than to replace it with a better one. The most prominent advocate of the latter view is G. A. Cohen (2011).

Many people have intuitive beliefs that support one or both of these approaches to cultural preservation. However, they lack a foundation in any stronger evidence than these intuitive beliefs. Simply referring to an assumed intrinsic value is always a weak way of justifying certain policies, especially when the latter involve placing restrictions on freedom: there are many people who cannot be persuaded of the intrinsic value of preservation, so why should they accept coercive politics based on that value? Moreover, a second problem with the appeal to the supposed intrinsic value of preserving culture is that it seems to imply that a cultural group has a duty to preserve their culture even if the whole group has no desire to do so, and this is not plausible.¹⁷

Thus, let us turn to the idea that preserving culture is a means for promoting other values – values that usually are tied to the interests of the members of the respective cultural group. Do we have reason to believe that preserving culture serves to enhance individual well-being? Historically speaking, there have indeed been cases where the disappearance of a culture caused severe harm.

¹⁶ Walzer, 1983: 39; see also Kymlicka, 1995: 121f.

¹⁷ For a similar rejection of reasons that attach an intrinsic value to preserving a culture, see Patten 2014: 20f. Patten calls these reasons “impersonal reasons”. All further arguments I discuss in that section and in section b) are reasons related to the interest of the members of a cultural group; they correspond to what Patten in his book calls “minority-regarding reasons”.

Many descendants of indigenous Pacific Islanders and of indigenous peoples in the Americas ended up wrestling with disorientation, unemployment, alcoholism and suicide after their traditional ways of life were merged into the culture of the newcomers. However, these cases exhibit additional features that could be seen as the actual cause of the disastrous outcomes, such as, in particular, the economic weakness of the indigenous groups and the lack of welfare systems, so that these outcomes could have been avoided even without preserving the natives' culture. Thus, these impressive cases do not justify a general link between preserving culture and individual well-being.

One could try to remedy this by arguing in general that preserving culture supports well-being and other values, for example because replacing any existing culture entails the significant risk that the new culture will not provide access to the same level of meaning in life as the traditional culture did. This argument rests on the plausible assumption that different cultures can be more or less beneficial insofar as they offer people a better or worse basis for finding meaning in life. Thus, the argument views preserving culture as a means to make a culture as enriching as possible. Indeed, the belief that rapid cultural change entails loss of meaning is widespread – my grandmother, for instance, was convinced that a society without religious rituals would necessarily be a society of dulled human beings. Needless to say, however, there is no reliable evidence for that belief.¹⁸

What about Kymlicka's approach, which provides the most well-known instrumental justification for protecting cultures? Kymlicka argues that culture is a precondition of freedom of choice, because culture provides a framework of valuable options between which an individual can choose. Thus, he claims, a profound sense of cultural belonging is essential for the exercise of individual freedom, and since transplantation from one culture to another creates burdens for those who are transplanted, politics should encourage people to stay within their culture of origin (Kymlicka, 1995: 86). However, as some authors (especially Nickel, 1994: 638; Patten, 2014: 76) have pointed out, although Kymlicka's argument is convincing with regard to people who already have cultural ties, it is very weak concerning future generations: Why should we grant groups the right to educate their children in their own culture, rather than integrating the children into the dominant culture of the society in which they live, or integrating them into the culture that is currently developing through high immigration rates? For the children, it would not be a major burden to integrate into the dominant or into a newly-emerging culture from the outset. Thus, although Kymlicka's argument that people should not be forcefully alienated from their original cultural framework is convincing, it does not have any relevance for the preservation of culture across generations.

¹⁸ I should anticipate that, in section 3.2, I will address some considerations that can be viewed as relevant for well-being.

This leaves us in an uncomfortable position: it is questionable whether there is an intrinsic value in preserving culture, and there does not seem to be any clear empirical or conceptual connection between preserving culture and other values such as well-being or individual freedom. At the same time, however, many members of cultural groups engage actively in preserving their culture: they will even tolerate disadvantages if they believe it will help to preserve their culture. One might conclude that such attitudes are simply irrational.¹⁹ However, that would be overhasty. Leaving the position of an impartial observer behind, we can explore whether there is a rational justification for preserving culture from the point of view of the respective members of cultural groups. Although this justification will also be concerned with intrinsic and instrumental values, it will do so indirectly, searching for conditions and implications of people jointly doing valuable things.

3.2) Justifications from the agents' point of view

Why is preserving culture important for the lives of individual members of the cultural group? I will approach this question in three steps. First, let us assume that many people have a strong desire to preserve their culture. Many of our desires respond to normative reasons, others do not. As the previous section made clear, the desire to preserve culture is potentially not a response to reason in the usual sense, since it is unclear whether preserving culture is an intrinsic value or a factor which promotes intrinsic values.

The mere fact that many people have this (possibly irrational) desire is certainly morally relevant: to some extent politics is supposed to be responsive to people's desires, even if they are not rational. Since people should be as free as possible, they should also be able to satisfy their desires. However, people have many desires, and not all of them justify a right, much less a group right. Is there anything that sets the desire to preserve culture apart, specifically which explains why we should attach special weight to that desire?

The second and the third step of my argument will each independently offer such a justification of why we should attribute special importance to the desire to preserve culture. The second step is based on the fact that the members of a cultural group will usually *value* their culture, or, at least, many elements of their culture. They will usually engage in projects that are perceived as valuable from their cultural perspective, not only because the projects serve some further purpose, but because the realization of the projects is perceived as valuable in itself.

As several theorists of value have pointed out, the attitude of valuing something entails a desire to preserve what is valued. If we value a certain cathedral, we will regret it if it burns down –

¹⁹ Indeed, Benhabib (2002: 4-8 and chap. 3) draws this conclusion after discussing similar justifications for preserving culture to those mentioned above.

valuing the cathedral implies regretting its loss (cf. Raz, 2001: 162; for the case of cultural goods, see Nickel, 1994: 639f.). This consideration already seems to endorse a claim to preserve culture. However, in the case of cultures, it needs to be qualified. For when a culture dies out, it does not leave behind a blank space, as a cathedral would if it were destroyed. Instead, when a culture ceases to exist, its members merge with those of other groups to form new cultural groups (since there is no such thing as a people without a culture), and the new ones can foreseeably be valued by their members just as much as the old ones were. Thus the key question with regard to cultures is not whether valuing something of value implies a desire to preserve it from destruction, but whether it implies a desire not to replace it by something of similar value.²⁰

I believe that a case can be made for drawing this conclusion. The crucial point is that, to value something intrinsically is not merely to value its contribution to the sum of value in the world, but also to value *that* particular thing. To take an obvious example, I can easily imagine that, if my current romantic relationship ended, I could find a new partner with whom I would be just as happy as I am with my current partner. Nevertheless, if I value my current relationship, I have good reasons not to end it, because I value *this specific relationship*, and not just the contribution it makes to my or my partner's happiness, or to the net sum of value in the world.

A similar consideration seems to apply to culture. If I value certain elements of culture, or if I value a certain way of life in general, without being able to identify specific valued elements, this implies a desire to preserve *these particular* cultural elements or *that particular* way of life, because I regard them not only as a means for creating value or happiness, but as valuable in themselves. If I regarded my culture solely as a means to achieving happiness, I would probably never reach that goal, for a culture contributes to well-being simply because its members view parts of the culture as intrinsically valuable. Note that this is not the same thing as saying that one impartially judges one's culture to be *better* than that of other people – other cultures simply do not encompass the particular things someone values.²¹

²⁰ The best account of this difference can be found in Cohen (2011). I differ from Cohen in that I do not conclude that an *impartial observer* should take into account, over and above the intrinsic value of something, also the surplus value of its continuing to exist rather than being replaced by something of equal value; for the impartial observer, all that counts is the intrinsic value, and the surplus value of continuing to exist is only a value *for those* who value their culture.

²¹ A problem arises if the valued things turn out in fact not to be valuable (I owe this objection to an anonymous reviewer). As I said above, there is no right to preserve injustice, and in the same way, I believe that there is no reason to preserve unjust states of affairs because they are valued by some people and these people wish to preserve them. Apart from violations of the requirements of justice and

If this reasoning is sound, then the desire to preserve culture is not just a relic of human evolution, but a desire that is usually formed as soon as a rational agent attaches value to a particular thing or practice. Thus, agents have a special interest in the satisfaction of that desire – an interest that is stronger than the interest in satisfying other preferences people might have. Of course, to the extent that a cultural group does not value their culture, the reason to respect the desire to preserve it diminishes. In general, however, it is reasonable to assume that cultural groups that raise a claim to preserve their culture do indeed value it.

As a third step, and independent from that, we should note that the value of engaging in practices *in the present* depends in part on the expectation that the practices will continue to exist *in the future*. I believe that Scheffler's (2016) influential ideas about the future existence of *humanity* can also be applied to the future existence of *cultures*. Scheffler argues that many of our activities would cease to be meaningful to us if we knew that humanity would cease to exist in the near future. The same can be said about culture. Many cultural activities would cease to be meaningful if we knew that future people would have completely different tastes, values, preferences, and lifestyle habits. Think about parents who encourage their children to play classical music. Making classical music is a valuable practice, and so parents will find meaning in engaging in their children's musical education. However, if parents knew that in twenty years' time, there would no longer be any classical orchestras their children could join, spending so much time in motivating their children to practise their instruments would seem less worthwhile. Education surely is a prime example of activities that borrow their meaning from beliefs concerning the future, but similar observations can be made in other cases as well. Think about founding a model railway club, or constructing a zoo, or joining a society to promote fine arts, and so on. All of these activities acquire their meaning in part from the prospect that certain cultural activities will continue to exist in the future.

One might say that my argument only justifies preserving those elements of culture whose continued existence in the future is necessary for meaningfully engaging in them. There are, however, so many facets of culture for which that might be true, and cultural elements are intertwined to such an extent, that the argument seems to support the right to preserve culture as such: only conditions that make it likely that the culture of a group is preserved will also make it likely that the facets of culture are preserved whose continued existence is necessary for meaningfully

of a few other universally defensible principles, however, we should follow the assumption that valued elements of culture are indeed valuable – none of us has a standpoint that would enable her definitely to judge the value of things valued by others. In principle, all elements of culture as defined in the broad sense above might be valuable, and any attempt to restrict the things that are potentially valuable would be paternalistic.

engaging in them. Likewise, my examples also show that preserving culture must be understood as a normative claim with limited force. I do not mean to say that we have a right to ensure that future generations will value classical music. My point is that we value the things we do now and find meaning in the activities we pursue in part because of the continuing existence of our culture – or, more precisely, the *expectation* that the culture will continue to exist rather than the *reality* of its continued existence. Thus, from the agents' point of view, the prospect of cultural continuity is a precondition of finding value in a range of cultural activities.

We are now in a position to justify a group right to preserve culture. The individual members of a cultural group have a threefold interest in conditions that make it likely that culture will be preserved. (1) We can expect that many of them, as a matter of fact, have a desire to preserve their culture. The universality and strength of that desire has two reasonable sources each of which lend its satisfaction special weight: (2) the fact that attaching intrinsic value to their particular culture implies a strong desire to preserve it and (3) the fact that the expectation that their culture will continue to exist is a prerequisite for some meaningful activities in the present. These steps show that the members of a culture have a strong interest in living under conditions that promote the future *continuity* of their culture. Since each member has an interest in preserving the activities she *herself* values, the interest in preserving culture cannot be met by an elite or a dominant group that forcefully enacts laws that prescribe cultural activities. Instead, the members have an interest in freely reinterpreting and adopting cultural behaviour, that is, in an *authentic* development of their culture, guided by themselves or by members of the group they accept as leaders. Taking together the interests of all members who value and wish to preserve their culture or certain elements of their culture, they are potentially strong enough to justify regarding non-members, as well as individual members, as being subject to the duty to respect, create and promote the existence of framework conditions, and the realization of supporting political measures, that make it likely that the culture or the respective elements of culture will develop in an authentic and continuous process.

4) A right of limited practical relevance

Before proceeding to the conclusion, I would like to address some objections to and limitations of my argument. Firstly, the right to preserve culture seems to rely on extremely general concepts.

According to my definition, nearly every element of human behaviour can be conceived as part of culture. Why not focus on more concrete elements of culture that are really worth preserving for some reason, or that are more closely connected to fundamental human interests, like universal values or religion? Of course, claims about the preservation of certain valuable practices could be stronger than the general right to preserve culture for which I have argued here. On the other hand, by restricting moral philosophy to these stronger claims, we would run the risk of excluding those

whose interests do not qualify as one of these stronger claims from the scope of moral reasoning. Every cultural element *could potentially* be something which is valued intrinsically and whose preservation should be incorporated in moral discourse, if a group of people want this. Therefore, the broad concept of culture ensures that we do not overlook some such elements.

Secondly, claims to the right to preserve culture are weakened by the fact that this is a right to conditions that make it *likely* that the culture will survive. Should we really expect others to support measures that will often prove to be unsuccessful? Again, I concede this point, but I do not regard it as a general objection to the right to preserve culture. Other moral considerations could take precedence over the *prima facie* right to preserve culture because of the uncertainty about whether a culture will actually survive. But this does not undermine the claim that there *is* such a right.

Therefore, it seems plausible that cultural groups have a right to preserve their culture. Minority groups have such a right, as explicitly recognized in human rights law; but majorities also have a right to preserve their culture.²² This right certainly has some political relevance, since it may imply that cultural groups are entitled to promote the continuation of their culture by including cultural elements in public education, building museums, subsidizing music schools, and the like. The right to preserve culture provides a plausible explanation for why we think that it is permissible for societies to do these things, even against the will of some of their members. However, these rights are not currently disputed. The more controversial question is whether nations are entitled to restrict immigration (even of refugees) in order to preserve their culture, and to what extent they can, when immigration has occurred, require immigrants to assimilate into the majority culture. I fear that the right to preserve culture has limited relevance in practice when faced with these questions.

Let us focus for the moment on restrictions on immigration. In many societies, the majority group shares sufficient cultural ties to count as a cultural group in the sense I defined above. Majority groups might therefore have a right to preserve their culture that suggests restrictions on immigration, but that right is limited by opposing rights, both group rights and individual rights. First of all, a majority's right to preserve its culture does not invalidate the claims of refugees. The claims of refugees rest on individual basic needs that are of greater importance than cultural interests. Of course, majority groups might be allowed to search for places outside their territory where the refugees' basic needs are satisfied, but these places may already be occupied by other cultural groups that, in turn, have a right to preserve their cultures. Furthermore, the refugees themselves also have a right to preserve their culture. This means that groups of refugees have a claim to find a

²² That is what I share with those who endorse the concept of majority rights (Orgad, 2015 and, far more limited, Patten, 2020).

new home in an environment that will allow them to practise their own culture, which sets further limits to any 'protection elsewhere' approach.

What about potential immigrants who do not count as refugees? It is difficult to judge the relevance of the right to preserve culture for this question. Most modern societies have immigrant minorities whose prospects of preserving their culture increase if more immigrants from their cultural group are admitted. As we have seen, the right to preserve one's culture is not a right to preserve the dominance of a certain culture, and thus the cultural claims of the immigrant minorities must be taken into consideration as well. It may even be appropriate to attach special weight to the claims of minorities, because minority cultures are usually more vulnerable than the majority culture.²³ Transnational cultural groups might also demand open rather than closed borders in order to preserve their culture (Lenard, 2010). Furthermore, as long as huge economic inequalities exist between states, the right to preserve culture has to be balanced against claims of global justice.

I have no doubt that there are cases in which preserving culture might justify closing borders. However, those cases are rare, at least in the contemporary world.

5) Conclusion

The first two sections of this article clarified the meaning of the group right to preserve culture by distinguishing it from other cultural claims and developing a definition of the term. The third section discussed possible justifications of that right and argued that a case can indeed be made for a right to preserve culture. In the fourth part, I highlighted the limits of this right when it comes to justifying restrictive border policies or policies of 'cultural defence'. In particular I showed that we should not attach too much political weight to the right to preserve culture in the case of majority groups within states. Democracy is currently organized in single states, and when it comes to decisions on cultural defence policies, the members of the majority culture of these states often prevail. This, however, is not a reason to conclude that they always have a moral right to do so.

²³ It has been argued that immigrant minorities do not have equal claims to preserve their culture in the diaspora, since it is sufficient that their cultures will continue to exist in their home countries. My arguments in section 3 suggest that this is deeply misleading: The immigrants' desire to preserve their culture and their future-oriented engagement in cultural matters relate to the preservation of their culture where they currently live. Thus, immigrant minorities must not be subjected to worse treatment than non-immigrant cultures with regard to the right to preserve culture.

Acknowledgments

I am grateful to Patti Lenard, Amir Mohseni, Samuel Scheffler, Martin Sticker, Reinold Schmücker, two anonymous reviewers, the participants of the workshop “Majority and Minority Rights” at WZB in Berlin, and the members of the Normative Theory of Immigration Working Group for helpful comments.

Funding

Funded by the Deutsche Forschungsgemeinschaft (DFG, German Research Foundation) under Germany’s Excellence Strategy – EXC 2060 “Religion and Politics. Dynamics of Tradition and Innovation” – 390726036.

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