

Cultural Rights of Migrants: A Philosophical and Theological Exploration

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This essay aims to explore the possibility of speaking of cultural rights of migrants from a philosophical as well as theological perspective. We are familiar with the human rights discourse but the concept of cultural rights is largely underdeveloped. This article hopes to help provide some conceptual clarification and theological reflections on the notion of cultural rights, particularly when applied in the case of migrants.

Before the 1960s, migrants were expected to assimilate the dominant culture in the country of migration. Assimilation is the practice where a host country allows individual migrants to join it on the condition that they integrate by giving up their original identity. The image used to describe the integration process is that of the melting pot — whether you are iron, ore or gold — you give up your identity by “melting” and assimilating the identity of the receiving community. This model however began to be questioned in the 1970’s especially by immigrant groups in favor of a more tolerant and pluralistic policy. This shift in consciousness can be attributed to two trends: 1) the emergence of immigrant transnationalism where migrants, aided by better transportation and instantaneous global communication systems, are able to maintain regular links with their home country; 2) the rise in the ideology of multiculturalism, that is, the notion that immigrants should not forget their customs, traditions, or ethnic identity but should be free to express this publicly.²

While the above two trends have been identified by Alan Patten and Will Kymlicka in the context of the situation of immigrants, these are operative or true as well, in the case of migrant workers and refugees. These trends, together with massive migration in today’s global context, have led to fears among citizens of host countries of the rise of ghettos side by side with the dominant cultures. A more developed concept of cultural rights however can provide the framework for advocating respect for the cultures of minorities

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² Will Kymlicka and Alan Patten, ed. “Introduction: Language Rights and Political Theory: Context, Issues, and Approaches,” in *Language Rights and Political Theory* (Cambridge: Oxford University, 2003), 8.

— aliens, indigenous peoples and migrant workers³ — while at the same time allaying fears of ghettos and permanent migrant enclaves.

1. What are Cultural Rights?

As we have noted, the concept of cultural rights is largely undeveloped.⁴ This paper aims to contribute to some conceptual clarification of what cultural rights are, through a dialogue with the insights of the French social theorist Pierre Bourdieu and the Canadian liberal theorist of immigrant multiculturalism, Will Kymlicka. To Bourdieu, the notion of cultural rights refers basically to the right of the individual in social-relation, to negotiate between what we can refer to as “the new and the old,” “the native and the foreign,” “the local and the global.” Kymlicka, on the other hand, elaborates on polyethnic [cultural] rights of migrants as a group-defined right. He addresses the fear about the possible clash between an individual cultural identity with a collective identity and group rights. Can a group restrict the freedom of an individual in the name of preserving cultural identity? We posit that the insights of Bourdieu on cultural practice from a post-Marxist standpoint can complement Kymlicka’s immigrant multiculturalism from a political liberal perspective.

1.1 Right to Cultural Expression, Development and Identity

A skeletal catalogue of what can be considered as cultural rights can already be found in international instruments such as the United Declarations of Human Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and in regional declarations such as the American Declaration on the Rights and Duties of Men, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights and in the African Charter on Human and People’s Rights. These documents focus on cultural rights as rights of the individual. The notion of cultural rights as “collective right” or “group-specific” right has already been recognized implicitly in the ICESCR and International Covenant on Civil and Political Rights (ICCPR). This is explicitly acknowledged in the 1982 World Conference on Cultural Policies, as well as in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

³ Halina Niec, “Advocating for Cultural Rights: Cultural Rights at the End of the World Decade for Cultural Development,” 7, Internet: <http://kvc.minbuza.nl/uk/archive/commentary/niec.html> (May 2006).

⁴ Halina Niec refers to its underdevelopment in terms of the following: 1) its legality and enforceability; 2) the possible clash between an individual cultural identity with a collective identity and group rights; 3) the vagueness of what ‘culture’ includes and therefore, which can be considered cultural rights and which rights are not cultural rights but possess cultural dimensions; 4) and the tensions between the universality of human rights and the notion of cultural relativism. On the other hand, the Preliminary Draft Declaration of Cultural Rights, refer to this ‘underdevelopment’ as due to the neglect of the role of cultural identity when speaking of cultural rights. *Ibid.*, 2-3, 5.

A number of other documents cataloguing cultural rights have also been produced.⁵

To begin our exploration, we shall take a look at the Preliminary Draft Declaration of Cultural Rights produced by a gathering of experts in Fribourg, Switzerland in 1995. Before this meeting, the Institute for Interdisciplinary Ethical and Human Rights Studies of Fribourg University, had come up with a list of cultural rights that are “unquestionably justifiable” so that those who violate these rights can be sued and tried at the European Court of Human Rights. The 1995 draft seems to have been based on this earlier catalogue of rights but in addition, underlines as well the importance of cultural identity when speaking about cultural rights.

Among the cultural rights the 1995 document lists are respect for cultural identity and the different ways this can be manifested, access to heritages, respect for identification with one or more cultural communities simultaneously regardless of borders, and the right to change this choice. Everyone is likewise entitled to participation in cultural life and policies, education and training in a way that respects the plurality of cultures, right to information, protection of scientific, artistic and creative output and ownership and the right to “correct and have corrected any erroneous information about cultures.”⁶

Cultural right in this document can be basically defined as right to cultural expression, development and identity. It is important however to identify the document’s underlying concept of culture that has become the basis of its list of cultural rights. In anthropological discourses, culture has oftentimes been used as a NOUN. It either refers to some elitist social practice (e.g. music, paintings, theatre, etc.) or to some communal forms of life, meanings and everyday practices. The notion of culture as VERB however stresses that before becoming a NOUN, culture is first a process. The Latin term *cultura* whose root is *colere* means “to cultivate”; thus originally it is a word referring to the cultivation or tending of something (animals and plants).

As the Groupe de Fribourg document itself explicitly states, culture refers to “the values, beliefs, languages, arts and sciences, traditions, institutions and ways of life by means of which individuals or groups express the meanings they give to their life and development.”⁷ This definition may seem to echo a static view of culture, that is, a notion of culture as an already finished product. A careful reading of the list of rights however reveals the document’s sensitivity as well to the dimension of culture as continuous process, as practice, such

⁵ Ibid.

⁶ Ibid.

⁷ Groupe de Fribourg in Cooperation with UNESCO, The Council of Europe, and The Swiss National Commission Project Concerning a Declaration of Cultural Rights (11th version), 1, Presented at the General Conference of the United Nations Educational, Scientific and Cultural Organization, September 4, 1996. Internet: <http://www.americas-society.org/as/events/pdf.d/UNESCO%20Fribourg.pdf#search='Groupe%20de%20Fribourg%20cultural%20right> (May 2006).

as in the freedom to choose which cultural activities to engage in, or right to education and training to enable one to participate in the development of one's cultural identity. Cultural identity here is also not viewed as something given and fixed but refers "to all cultural references through which individuals or groups define and express themselves and by which they wish to be recognized."⁸ As we have seen, the document's list of rights includes both the right to identify or not with a particular cultural community,⁹ and even the freedom to assume multiple cultural identities. The rights this document lists are also basically rights of the individual which s/he can exercise alone or together with others.

1.2 Appropriating Bourdieu: Culture as Negotiated by an Individual in Social Relation

Bourdieu himself did not speak about cultural rights. His discourse however on [cultural] practice as shaped by both habitus and field clearly highlights culture as negotiated by individuals in social relation.

Habitus for Bourdieu refers to "a system of lasting, transposable dispositions which, integrating past experiences, functions at every moment as a *matrix of perceptions, appreciations and actions*."¹⁰ Habitus is inculcated through socialization especially from childhood (e.g. table manners,) and is inscribed in the body such as in one's way of talking or walking or taste (e.g. the Koreans like kimchi and the Filipinos fermented shrimp paste). These dispositions become second nature to a person and operate largely in a pre-conscious manner.¹¹ Habitus orients individuals on how to act and respond in their everyday life without strictly determining them. It provides them with a "feel for the game," a practical sense as to what is appropriate or not in a particular circumstance. Bourdieu also used the term "cultural unconscious" to refer to habitus.¹²

Bourdieu further notes that on the one hand, habitus is a "structured structure"; what individuals view as "reasonable" or "unreasonable" for

⁸ A commentary on the Fribourg Group draft declaration notes that "cultural identity reveals three kinds of opposition, namely, those between the particular and the universal, the result and the process, and diversification and cohesion. This means that it cannot be understood in a unilateral particularist sense, since identity is also developed by reference to the universal (the ability to be a person) not in a unilateral backward-looking sense, for it is at the same time a process, nor yet as an endless multiplication process, since it also needs unification." Patrice Meyer-Bisch, "The Right to Education in the Context of Cultural Rights," 2; Internet: http://www.bayefsky.com/general/e_c.12_1998_17.php (May 2006).

⁹ The document defines a cultural community as "a group of persons who share those cultural references that comprise a common cultural identity, and which they wish to preserve and develop, as essential to their human dignity, in the respect of human rights." Groupe de Fribourg, A Declaration of Cultural Rights.

¹⁰ Pierre Bourdieu, *Outline of a Theory of Practice*, trans. Richard Nice (Cambridge: Cambridge University, 1977), 83, reprint ed. 1998.

¹¹ John B. Thompson, "Introduction to Bourdieu's Language and Symbolic Power," in *Pierre Bourdieu*, ed. Derek Robbins, vol. 3. (London: Sage, 2000), 184.

¹² David Schwarz, *Culture and Power*. Chicago: University of Chicago, 1997), 101.

people of their status in the social world, stems from habitus. In this way habitus perpetuates existing opportunity structures/conditions. On the other hand, habitus is also a “structuring structure”; it has an inventive or creative dimension. The durable dispositions can generate or produce a variety of practices and perceptions in fields beyond those in which the habitus was initially acquired.¹³ Gary Bouma’s study of religion and migrant settlement in Australia, for instance, showed that Muslims in Australia do not simply take overseas models as normative; they search for what it means to be a Muslim in Australia, thus creating an in-beyond religiosity. “As Muslims gather to establish mosques and schools, they are forging a new form of Islam one which is true to its ancient heritage but one which is also true to Australia.”¹⁴

In general, in the case of migrants who are physically and culturally displaced from their original setting, their actions or perceptions, in Bourdieu’s concept of practice, will not simply be determined mechanically by their habitus (cultural unconscious) but is a fruit of the encounter between the habitus and the field (also called *champ* or game) or particular social context within which they act. Their practice will be a strategic response to the new field(s) within which they now find themselves.

A field can be described as a structured space of positions of status or stakes; a site of struggle for the right to speak or the power to legitimate. The interrelation of one’s economic, cultural and social capital affects one’s position in the field and right to define doxa or the truth. Capital, for Bourdieu, is broader than its common economic connotation. He speaks of three types of capital: economic (wealth, income, property), cultural (cultivated and embodied dispositions, cultural artifacts, educational credentials) and social capital (social connections or network). In identifying culture as capital, Bourdieu underlines the “power dimensions of cultural dispositions and resources in market societies.”¹⁵ For instance, how the culture of a migrant is evaluated in the host country (the new field) affects one’s status in that country and how the migrant will negotiate and try to survive in this new field.

Backed up by extensive field work, Bourdieu offers in his book, *Distinction*, the following equation of his general science of practice: [(habitus) (capital) + field] = practice.¹⁶ In Bourdieu’s framework therefore, a cultural right, even when exercised by an individual, is always situated within a community in the form of the role of social structures [field], as well as, the community traditions embedded in one’s cultural unconscious [habitus]. A right is always exercised by an individual-in-social relation; an individual embedded in community

¹³ Bourdieu, *Outline of a Theory of Practice*, 72.

¹⁴ Gary Bouma, “Religion and Migrant Settlement.” *Asian Migrant* 18, no. 2 (April-June 1995): 41.

¹⁵ David Schwarz, *Culture and Power* (Chicago: University of Chicago, 1997), 80.

¹⁶ Pierre Bourdieu, *Distinction: A Social Critique of the Judgment of Taste* (Cambridge Mass.: Harvard University, 1984), 101.

structures.

Using the concepts of habitus and field as heuristic device, we can say that the new migrant finds him/herself in a different set of field(s), generally possessing less social, cultural or economic “capital”, and in the midst of peoples sharing a different habitus. As the Vietnamese-American theologian Peter Phan notes, from a cultural standpoint, transnational migrants in particular exist “in a betwixt-and-between situation. They live and move and have their being between two cultures, their own and that of the host country. In this ‘in-between’ predicament, they belong to neither culture fully yet participate in both.”¹⁷

Situated in another setting or field, migrants must therefore acquire a “feel for the game” to survive; they have to re-learn how to act and react in a new context and expand their cultural competence. This is a long-term process especially for the adult migrants. The migrant is also “challenged to forge a new sense of self out of the resources of two often conflicting cultural and spiritual traditions.”¹⁸

While being in betwixt-and-between can cause tension and conflict, this social location can also be a font of creativity. Being in betwixt-and-between is, paradoxically, also being both this and that, both insiders and outsiders. Thus according to Phan, they are in a standpoint that may be able to discern more the strengths as well as the weaknesses of both cultures. They are better equipped to contribute to a rethinking of both cultural traditions, the native and the foreign and thus pave the way to the emergence of a new, enriched culture.

This new enriched synthesis however cannot develop if the cultural capital of migrants is generally devalued. Bourdieu’s concept of field locates culture within the context of power relations. Mutual fecundity can only truly happen in the context of a mutually empowering relation. To know whether mutuality exists in a relationship entails a power analysis: Who or which group possesses greater economic, cultural and social capital? Who possesses symbolic capital or the power to define doxa? Is power being used to dominate or “is there an active commitment on the part of all parties to become increasingly mutual? Is a mutually empowering relational dynamism at work transforming the relationship? If not, it is not a right relationship.”¹⁹ A mutually empowering relation must thus lead to changes in objective conditions such as the dominant societies’ recognition of other ethnic groups’ cultural capital as well as the latter’s right to increased access to economic capital. The right to cultural

¹⁷ Peter Phan, “The Experience of Migration as Source of Intercultural Theology in the United States,” in *Christianity with an Asian Face: Asian American Theology in the Ministry* (Maryknoll, NY: Orbis, 2003), 8-10.

¹⁸ *Ibid.*, 9.

¹⁹ Carter Heyward, “Mutuality.” In *A-Z of Feminist Theology*, ed. L. Isherwood and D. McEwan (Sheffield: Sheffield Academic Press, 1996), 156.

expression and development implies a duty, an obligation on the part of the State, to help enable the practice of such rights through anti-racism policies and some form of accommodation in its institutions.

An attitude of *laissez-faire* or benign neglect vis-à-vis the cultures on the part of the country of immigration, tantamounts to a policy of assimilation, where in the end, because there is low regard for the cultural capital of the migrants, the latter would indeed either try to survive as ghettos side by side the dominant culture or the succeeding generations would be forced by circumstances to forget their cultural heritage.

For Bourdieu, cultural practice possesses a logic; it is a strategic response considering one's position in the field of power, that maximizes one's economic, cultural and social capital.²⁰ Within this perspective, the *raison d'être* of maintaining or rejecting a traditional cultural practice in the migrant context, is rooted in how this ultimately facilitates the experience of well-being in the new context.

1.3 Kymlicka: On Group-Specific Polyethnic [Cultural] Rights

Kymlicka develops the notion of minority rights, particularly in his book, *Multicultural Citizenship*. As a liberal theorist, Kymlicka is interested in showing how minority rights can exist side by side with human rights as well as the extent to which it is limited by "principles of individual liberty, democracy and social justice."²¹ Kymlicka tries to counter those who would contend that liberal philosophy dichotomizes the individual from society by arguing that even if the liberal starting point is the universal value of individual freedom and democracy, these values can in fact be upheld only if they are embodied within the institutions and traditions of particular political communities, which in turn can be upheld only if citizens have a strong sense of identification with and membership in these particular communities.²²

Kymlicka distinguishes between two types of minorities: immigrants and national minorities. Immigrants are people who have left their home countries to settle in another country while national minorities constitute historical communities within a country but they have a different language and culture (e.g. Muslims in the Philippines, Tamils in Sri Lanka, etc.). These two groups, according to Kymlicka, are entitled to a different set of rights.

National minority groups oftentimes aim at maintaining an autonomous societal culture to preserve their cultural identity. Societal culture refers to

²⁰ In the field, one form of capital can be converted into another. For example, the social network or capital one acquires in migrant communities can be reconverted into a new or better paying job, thus an increase in economic capital.

²¹ Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995), 6.

²² Will Kymlicka and Alan Patten, *Language Rights and Political Theory* (Cambridge: Oxford University, 2003), 11.

shared memories, values, practices and institutions (economic, political, religious, etc.) that provide its members with meaningful ways of life. Societal cultures are usually geographically bound and based on a common language.²³ National minority groups therefore, should be able to demand self-government (autonomy) and special representation rights (right of ethnic groups to be represented within the institutions of the larger state)

Unlike national minorities however, Kymlicka argues that immigrants normally do not wish to set up a parallel societal culture. Having voluntarily decided to leave their home countries, immigrants know that their success and that of their children depends on the extent to which they integrate within the culture of the host country. They have, however, brought with them a shared vocabulary and tradition which continues to function as their spectacles in making sense of the world (in the words of Bourdieu, their matrix of perceptions and actions). Since integration takes time and operates even intergenerationally, immigrants must be assisted in this process. Their rejection of the assimilation model is not a rejection of integration per se but rather a modification in the terms of integration so that while being treated as equal members of the society, their differences as well are respected. It is within this context that Kymlicka speaks of polyethnic rights, which are cultural rights specific to immigrants.

This demand for freedom of cultural expression in itself does not entail a group-specific or collective right. Polyethnic rights are group-differentiated rights which enable “ethnic groups and religious minorities express their cultural particularity without it hampering their success in the economic and political institutions of the dominant society.”²⁴ An example would be the demand for public funding for ethnic art, museums, studies and associations. Since many Western nations provide state funding for such cultural practices, this demand by immigrants is a way equalizing recognition and opportunities. But the more controversial polyethnic rights would include “exemptions from laws and regulations that disadvantage immigrants, given their religious practices.” An example would be the demand for Muslim girls to be exempted from school dress codes so they can wear the veil.

While polyethnic rights are group-differentiated, it is not helpful, according to Kymlicka, to refer to these as collective rights as some authors would. The term “collective rights” for him connotes a false dichotomy between individual and collective rights. Polyethnic or group-specific rights may be exercised by either an individual or a collective.²⁵

Kymlicka also rightly prefers to respond to the fear of a conflict between “collective rights” with “individual rights” by using instead the distinction

²³ Kymlicka, *Multicultural Citizenship*, 76.

²⁴ *Ibid.*, 31.

²⁵ *Ibid.*, 46.

“internal restrictions’ and “external protections.”²⁶ Internal restrictions pertain to a claim of a group to its own members. It is aimed at controlling internal dissent, as when individuals would not follow age-old practices or customs. In the name of preserving cultural particularity, an ethnic group may ask the State for a special right to restrict the freedom of its members (for example, to undergo clitoridectomy, to follow parentally arranged marriages or traditional gender roles). Such internal restrictions can be oppressive to individuals. Kymlicka rejects such internal restrictions which go against the person’s right to identify with or reject the cultural community’s practices or to revise cultural practices in accordance with the human rights tradition. In reality, very rarely have immigrant groups asked for polyethnic rights to control the members within a group.²⁷

External protections, on the other hand, pertain to claims made by a group in relation to the bigger society. While internal restrictions involve intra-group relations, external protections involve inter-group relations. The aim of external protections, posits Kymlicka, is to protect a cultural group’s “distinct existence and identity” from the impact of certain political or economic decisions within the larger society.

As with internal restrictions, there are indeed dangers as well that external protections will be used to oppress either another group or individual members of a cultural community. But Kymlicka does not think granting polyethnic rights such as funding for immigrant language programs or art associations, or exemptions in dress codes will necessarily lead to the domination of another group. Instead this can even help equalize relationships among groups in the cultural marketplace by placing them on equal footing.²⁸

Kymlicka notes that as with self-government rights, “polyethnic rights are not seen as temporary, because the cultural difference they protect are not something we seek to eliminate.”²⁹ Kymlicka seems to be more strongly emphasizing in this instance, the culture of the migrants as a finished product whose distinct identity should be preserved, rather than viewing culture as something that is continuously being negotiated and developed. This also reflects a homogenous concept of culture which, Helder De Schutter demonstrates in

²⁶ Ibid., 35-44.

²⁷ More than immigrant groups per se, it is religious communities who demand internal restrictions. An example would be the Amish, a Christian sect, which is not required to follow the mandatory education of children in both United States and Canada. Ibid., 41-42.

²⁸ Kymlicka however recognizes that certain laws aimed at external protection such as group-libel laws can also be used for internal restrictions. For instance, in the context of the Salman Rushdie affair, some British Muslims wanted similar hate-speech laws that protect blacks and Jews against racist discourse, applied to protect Muslims from the Islamophobia in the West. However, these very same laws can also be used to control the freedom of expression among the Muslims themselves. Kymlicka, *Multicultural Citizenship*, 43.

²⁹ Ibid., 31.

his article, plagues as well Kymlicka's notion of national minority cultures.³⁰

From a feminist perspective, Susan Moller Okin criticized Kymlicka's neglect of the fact that many cultures are patriarchal and thus in the representation of what the "culture" is, it is usually the voice of the men which stands out.³¹ Kymlicka's seemingly unproblematic acceptance of exemptions allowing Moslem women to wear the veil, for instance in secular France, reveals his monolithic perspective on culture. One Malaysian Muslim woman, according to Okin, remarked that if the ban on the wearing of the veil in schools in France would be lifted, her parents would force her to wear the veil against her will. While we are aware of the many meanings that the veil can represent for various Moslem women (e.g. it can be a symbol of defiance of Western culture, it can be a liberating attire because with the veil one can be freer to move around in Moslem places, or it can also be a symbol of subordination, etc.)³², this complexity does not come out in Kymlicka's discussion of polyethnic rights because of his view of cultures as a monolithic bloc.

On the other hand, Kymlicka recognizes as well that cultural change can happen in the encounter between the culture of the migrants and the dominant culture. "The liberal view I am defending insists that people can stand back and assess moral values and traditional ways of life." Therefore citizens "should be given not only the legal right to do so, but also the social conditions which enhance this capacity."³³ There thus lurks an ambivalence in Kymlicka's concept of culture in his discourse on immigrants.

In his concept of habitus, Bourdieu is able to integrate more differences like gender, social class, age, etc. He refers to these as class distinctions which get embodied in the habitus. He defines classes in terms of "similar positions in social space' that provide 'similar conditions of existence and conditioning' and therefore create 'similar dispositions' which in turn generates 'similar practices.'³⁴ Together with economic factors, gender, race, ethnicity, place of residence and age are, for Bourdieu, inseparable features of class habitus. We cannot therefore immediately presuppose a single or homogenous habitus even among migrants of same ethnic grouping. Does this therefore invalidate the need for polyethnic rights?

We posit that external protections are needed primarily for immigrants, not

³⁰ Helder De Schutter, "Nations, Boundaries and Justice: On Will Kymlicka's Theory of Multinationalism," *Ethical Perspectives: Journal of the European Ethics Network* 11, no. 1 (2005): 18, 23-32.

³¹ Susan Moller Okin, *Is Multiculturalism Bad for Women?* (Princeton, New Jersey: Princeton University, 1999), 23-24.

³² Bahar Davary, "A Matter of Veils: An Islamic Response," in *Ethics and World Religions: Cross-cultural Case Studies*, ed. Regina Wentzel Wolfe and Christine E. Gudorf. Maryknoll, New York: Orbis, 1999, 153-59.

³³ Kymlicka, *Multicultural Citizenship*, 92.

³⁴ Pierre Bourdieu, "What Makes a Social Class? On the Theoretical and Practical Existence of Groups," *Berkeley Journal of Sociology* 32 (1987). Cited by Schwarz, *Culture and Power*, 153-54.

to protect an already established distinct identity, but as Kymlicka underlined as well, to help the members express themselves in their cultural particularity in the process of integrating as full and equal members with those of the majority culture. Whether this cultural particularity will remain the same, evolve through time, fuse in an in-between form with the majority culture or even disappear, will depend on the choices that the migrant members themselves will make. This requires further conceptual development in terms of process and member's participation in advocacies for group-specific rights.

A number of authors have likewise criticized Kymlicka for distinguishing between the rights of national minorities and immigrants. These authors argue that this sets up a kind of hierarchy between these two types of minorities, with the national minorities being entitled to more rights like that of self-government and representation while immigrants are only entitled to polyethnic rights and to a certain extent, some form of representation rights.³⁵ Kymlicka actually states that there is no reason why immigrants may not ask for self-government rights (e.g. autonomy) if they are concentrated geographically in one place. He fears however that this perspective may simply discourage host States from further welcoming migrants to their countries.

1.4 Arguments in Favor of Polyethnic [Cultural] Rights

Kymlicka identifies basically two main arguments in support of group-defined rights for immigrants. The equality argument posits that polyethnic rights are needed to ensure that immigrants are treated equally. Such equal treatment entails the accommodation as well of differences. While leaving behind many institutionalized practices, immigrants bring with them a shared vocabulary of tradition and convention. They are thus, in our terms, in-between cultures and learning a new "vocabulary" for life. While not aiming at the recreation of the societal culture they left behind, the immigrants, Kymlicka underlines, should be enabled to integrate in the mainstream culture in a way that respects their difference.³⁶

Facilitating integration entails rooting out prejudice and discrimination. This requires re-evaluation of the representation of immigrants in textbooks, official documents and the media as well as certain group-defined rights. Integration also is a long-term inter-generational process so that some accommodations are needed by immigrants to facilitate transition. For instance, some services may be offered in the native tongue of the immigrants. "Support should be provided for those groups and organizations within immigrant communities which assist in the settlement/integration process."³⁷

³⁵ De Schutter, "Nations, Boundaries and Justice, 22.

³⁶ Kymlicka, *Multicultural Citizenship*, 92.

³⁷ Will Kymlicka, *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship*. (Oxford: Oxford University, 2001). A history-based argument for a polyethnic right is grounded on

A second argument, the intrinsic value of cultural diversity, posits the value of maintaining cultural diversity in society. This should not be interpreted, according to Kymlicka, as imposing a “duty to maintain one’s culture” but simply as a right, if the immigrant so wishes, to maintain his/her culture.³⁸ The host country, on its part, will be benefited by the new options and perspectives that will make its culture richer and more diverse.³⁹

1.5 The Discourse of Cultural Rights and the Human Rights Tradition

As we have discussed in earlier sections, cultural rights as human rights have already been acknowledged in several universal and regional declarations, both as individual or group-specific rights. In general however, these documents simply demand the toleration of cultural rights. Kymlicka refers to tolerance rights as basically protecting individuals from government interference. For example, the right of migrants to publish their own magazines, to set up their own private schools, to form their own cultural associations, to speak the language they prefer for private conversations in the home, in civic organizations or institutions of civil society, the workplace, etc., can be protected under the UNDHR as freedom of expression (art.19) and right not to be subjected to arbitrary interference with...privacy, family, home or correspondence (art.12). The UNDHR also provides a space for accommodations like ensuring a court-appointed interpreter in trials to ensure a migrant’s right to a fair trial (art. 10).

In contrast, promotion-oriented rights entail encouraging public institutions to be involved in promoting a cultural right. The UNDHR is not clear about promotion rights for immigrant groups such as “right to public funding of minority language schools, right to use one’s language in dealing with public officials, right to have judicial proceedings in one’s language or receive government documents in one’s language, right to official language status.”⁴⁰

Kymlicka argues also that traditional human rights discourse cannot deal with some crucial questions such as: “What degree of cultural integration can be required of immigrants and refugees before they acquire citizenship?”⁴¹ Thus Kymlicka sees the need to further supplement human rights tradition with a theory of minority rights.

a historically backed claim, in particular, by sovereignty treaties or some other form of historical agreement. This is a rare case so that one can treat this more as an anomalous case. An example would be the Hutterites, a Christian sect, that had been encouraged by the Canadian government to settle in Canada with the promise that they would be exempted from some education, land ownership and military service laws. Kymlicka, *Multicultural Citizenship*, 120.

³⁸ Kymlicka, *Multicultural Citizenship*, 217, n.24.

³⁹ *Ibid.*, 78-79.

⁴⁰ Kymlicka and Patten, *Language Rights and Political Theory*, 26-27.

⁴¹ Kymlicka, *Multicultural Citizenship*, 4.

1.6 Synthesis: Cultural Rights, Refugees and Metics

In the above discussion, we have clarified cultural right as the right to cultural expression, development and identity. Cultural rights are human rights and this has already been acknowledged in universal and regional declarations. Most of these rights focus on the individual as subject of cultural right. Bourdieu's framework underlines that this subject of cultural practice is not the atomistic individual but rather the individual in social relation; the individual possessing a habitus [cultural unconscious] and making decisions in a particular field of power. His model also highlights the fact that cultural practices and cultural identities are negotiated within the new field – the migrant context.

Kymlicka, on the other hand, elaborates on polyethnic rights or cultural rights that are group-specific. Kymlicka argues — on the basis of liberal principles of freedom and equality, and of the intrinsic value of cultural diversity — of immigrants' claim to these group-defined rights. But these rights, he contends, should be used solely for external protections and not to prevent dissent from members of a cultural group. He also notes that while the UNDHR protects rights related to cultural expression and development, it is not able to deal with questions about group-specific (polyethnic) rights.

Kymlicka however confined his discussion of polyethnic rights to immigrants. Can refugees demand the same types of cultural rights? Refugees are different from immigrants in the sense that they did not voluntarily leave their countries and relinquished their national rights. Kymlicka fears that fewer countries would accept these refugees if they are expected to treat them as national minorities and oftentimes, these refugee groups are also too small in number and dispersed to form self-governing communities. He remarks that “the best that refugees can realistically expect is to be treated as immigrants, with the corresponding polyethnic rights, and hope to return to their homeland as quickly as possible.”⁴² In principle therefore, refugees can also have a claim to polyethnic rights.

Kymlicka does not deal as well with the situation of metics. In ancient Athens, metics refer to permanent resident aliens, denied citizenship.⁴³ In the context of today's migration, we do have a lot of guest workers who end up staying almost permanently or for long periods in the host countries. Can they also have a claim to polyethnic rights? This question may be a subject for further exploration.

2. Cultural Rights from a Trintarian Perspective

What can be a theological foundation for speaking of a right to cultural expression, development and identity? The theological foundation of the [Roman Catholic] Church's human rights teaching is our inherent dignity as

⁴² Ibid., 97.

⁴³ Kymlicka, *Politics in the Vernacular*, 153.

persons, rooted in our being made in the image and likeness of God. As such, we believe in faith that the law of God is written in our hearts (Pacem in Terris 5):

[T]he Creator of the world has imprinted in man's heart an order which his conscience reveals to him and enjoins him to obey. This shows the obligations of the law are written in their hearts; their conscience utters its own testimony. And how could it be otherwise? For whatever God has made shows forth His infinite wisdom and it is manifested more clearly in the things which have greater perfection.

Jacques Mauritian, a personalist philosopher, defends the Church teaching on human rights from a Thomistic perspective, as philosophically based on natural law. Knowledge of this natural law is acquired by “inclination” or “connaturality,” that is, it is a practical knowledge, so that even groups with varying ideologies can, on a practical level, agree on a certain list of rights. D. Fergusson notes how this can explain what is happening within an organization like Amnesty International where members find a shared moral ground even without a common moral theory.⁴⁴

While human rights set a transcultural universal standard, legitimate diversity in the past was also respected via the principle of subsidiarity. The principle of subsidiarity leaves it to individual nation states “how best to maximize human welfare within the bounds of respect for human rights.”⁴⁵ The principle of subsidiarity however presumes first a commonality in the universals and then differentiation on the local level. It seems there is a need to develop other theological metaphors or principles that more dynamically capture sameness and difference.

As we have said, theologically, human rights are grounded in our being made in the image and likeness of God. But the Christian God, in whose image we have been created, is not a unitary but a Trinitarian God characterized by relationality, diversity and creativity. We posit that this can be a fertile theological starting point for speaking about our right to cultural expression, development and identity. We shall simply try to sketch in broad outlines what such a theology can highlight.

2.1 Relationality and Mutuality

At the heart of the various representations of the doctrine of the Trinity

⁴⁴ D. Fergusson, *Community, Liberalism and Christian Ethics* (New Studies in Christian Ethics, 13) (Cambridge, Cambridge University Press, 1998), 168-69, cited by J. Clague, “A Dubious Idiom and Rhetoric: How Problematic is the Language of Human Rights in Catholic Social Thought?” In *Catholic Social Thought: Twilight or Renaissance*, ed. J.S.Boswell, F.P. McHugh and J. Verstraeten (Leuven: Leuven University, 2000), 138.

⁴⁵ J. Clague, “A Dubious Idiom and Rhetoric,” 125-40.

is God's relationality. Responding to Arius and Eunomius who posit that the essence of God is in God's unbegottenness, the Cappadocians – Basil, Gregory of Nyssa and Gregory of Nazianzus – underline that the principle of the divine ousia (*loob* or inner self) is inseparable from God's relations.

According to Greek theology, persons are defined by their "relation of origin," from whence they come. For example, the Son is defined by origin from the Father; the Son is begotten from the Father. The Holy Spirit likewise originates from the Father: the Spirit proceeds from the Father. The identity and unique reality of a person emerges entirely in relation to another person.⁴⁶

Even if for the Cappadocians, the Father is the unoriginate origin, this does not mean the nature of God is in being unrelated or unbegotten as Arius and Eunomius would hold. "[I]t is precisely the economy of Christ and the Spirit that introduces the all-important qualification: the unoriginate God is by nature originating and related."⁴⁷

In Latin Trinitarian theology however, which has shaped much of the Catholic understanding of the Trinity, God is initially one, then three. Augustine's primary model of the Trinity however was the individual, instead of the community experience. As created in the image and likeness of God, Augustine propounds that we have within us the vestiges of the Trinity, in our memory, intellect, will. It was the 12th century monk Richard of St. Victor who paved the way for a social approach to the Trinity instead of a purely psychological one. He developed a marginal aspect in Augustine's theory of the Trinity and imaged the persons of the Trinity as Lover, the Beloved and the Loved. Richard St. Victor, living in the 12th century, a period of emerging interest in friendship, was interested in studying how human friendship is related with divine love.

This image of the Trinity in terms of friendship stresses the mutuality and equality of the persons in the Trinity. As Johnson notes:

Friendship is the most free, the least possessive, the most mutual of relationships, able to cross social barriers in genuine reciprocal regard.... what makes it unique is that friends are fundamentally side-by-side in common interests, common delights, shared responsibilities. Mature friendship is open to the inclusion of others in the circle, assuming an essential stance of hospitality.⁴⁸

⁴⁶ Catherine Mowry La Cugna, "God in Communion with Us," in *Freeing Theology: The Essentials of Theology in Feminist Perspective* (New York: Harper Collins, 1993), 87.

⁴⁷ *Ibid.*, 87.

⁴⁸ Elizabeth A. Johnson, *She Who Is: The Mystery of God in Feminist Theological Discourse* (New York: Crossroad, 1996), 217.

This image of the Trinity as a community of friends does not lead to tritheism because for Richard, humans are basically communal beings, not autonomous selves. In the Divine as well, unlike in finite humans, there is “infinite self giving and infinite reception of love.”⁴⁹

As images of the Trinity, we are likewise persons-in-social relations, not individual isolated subjectivities. Our cultural practices and identities are formed in relation and in dialogue with others. How others perceive and respond to us, whether with hospitality or xenophobia, shapes our self-identity. The Trinity as community of friends challenges us to be welcoming of “others” who do not initially belong to our “circle” as migrants and refugees. Mutuality in the Trinity also calls us to recognize the gifts that migrants bring—their contribution to economic development, their cultural capital—as well as to work towards social reforms that would allow them to have greater access to economic capital.

2.2 Equality in Diversity

Equality in the Trinity is grounded in the sharing of the persons of the same *ousia* (*loob* or inner self).⁵⁰ The terms *ousia* and substance have been used to describe what in God is always the same; and *persons* to refer to what differentiates God. The Greeks used the term *prosopon* to describe what in God is three. *Prosopon* designated a specific individual reality. The Christian God is three *prosopa* (individualities) but what they are like, this term does not really tell us.

While distinct from each other, the three persons are equal because they share the same *ousia* (*loob* or inner self). We can understand this more clearly in Philippine categories via the term *kapwa*. Virgilio Enriquez, a pioneer in Philippine indigenous psychology propounds that *kapwa* does not only connote the other as distinct from me but more than this, it is the “unity of the self and other.” *Kapwa* is generally used to refer to that which is called in English “others” but while referring to a distinct individuality, the stress in *kapwa* is on the shared inner self or shared *loob* with an other. In this sense, we can speak of the relationality in the Trinity in terms of “*pakikipagkapwa*” (relating justly with the one who is both similar and different).

Cultural rights can be understood within this Trinitarian social model of equality in diversity. The Trinity is a model for societies and cultural communities, of a relationship without subordination or domination and where difference is allowed to exist. The [Roman Catholic] Church document

⁴⁹ Denis Edwards, *Jesus the Wisdom of God: An Ecological Theology* (Maryknoll, New York: Orbis, 1995), 96.

⁵⁰ *Loob* does not refer to the essence of a person as separate from others. As an inner quality, it cannot be separated from its outward manifestation, that is, from the way one relates with others. Rather, the quality of one's *loob* (beautiful, good or bad) precisely depends on the way one relates to others.

Erga Migrantes Caritas Christi 34 stresses how dialogue with various cultures reflect the unity in diversity in the Trinity:

Different cultural identities are thus to open up to a universal way of understanding, not abandoning their own positive elements but putting them at the service of the whole of humanity. While this logic engages every particular Church, it highlights and reveals that unity in diversity that is contemplated in the Trinity, which for its part, refers to the communion of all to the fullness of the personal life of each one.

Respect for cultural rights is a manifestation of the Trinitarian “*pakikipagkapwa*”. *Pakikipagkapwa* in a Philippine perspective, is rooted in our belief in our shared *loob* (inner self) with others. Furthermore, “*kapwa*” (other or fellow) is the sole Philippine concept that includes both the “insider” and the “outsider”; the “one of us” and the “not one of us”, the “similar” and the “different”.⁵¹ Thus “*pakikipagkapwa*” (relating justly with the one who is similar and different) in the form of respect for cultural rights embraces the stranger, the migrant, the alien.

2.3 Creativity and Fecundity

The Trinity is also characterized by creativity and fecundity. Here we critically appropriate the Trinitarian theology of St. Bonaventure (13th century). Bonaventure underlines that goodness is “self-diffusive”. *Ang sankalikasan ay bunga ng pag-uumapaw ng kagandahang-loob ng Diyos*. (Creation is a fruit of the overflowing of God’s gracious love.)

From the Fountain Fullness proceeds the Word, the Exemplar, the image of the First Person. The Holy Spirit is Love freely shared between the First and Second Persons and “from this mutual love proceeds the Spirit who is love.” This dynamic goodness “explodes into a thousand forms” in the world of creation. Creation is thus the free and creative self expression of God. This fecundity is at the heart of the Trinitarian reality and is a fruit of the persons’ profound and dynamic communion of interdependence and mutuality. Bonaventure used the term *circumincessio* (in Greek, *perichoresis*) to refer to this mutual interpersonal relations and indwelling, which overflows in creation.

The structure of Bonaventure’s processional model however carries an implicit subordinationism in the notion of First Person as Unoriginate Origin of the Word and the Spirit. It is thus important to stress the radical equality of the three persons of the Trinity and to correct this processional model with other metaphors where there is no first, second and third.⁵² In fact, as the

⁵¹ Agnes Brazal, “Reinventing Pakikipagkapwa: An Exploration of Its Potential for Promoting Respect for Plurality,” in *Fundamentalism and Pluralism in the Church*, ed. Dennis Gonzalez (Manila: Dakateo, 2004), 55-61.

⁵² Johnson, *She Who Is*, 219.

biblical accounts show, all three persons are already present from the moment of creation. Denis Edwards balances Bonaventure's processional model by situating it within Richard of St. Victor's God of Mutual Love.⁵³

Having emanated from God's goodness, every creature in Bonaventure's theology reflects the Trinitarian presence. As the Trinity, we are likewise inherently creative and fecund. The right to cultural expression, development and identity allows us to actualize this trace of the Trinity in us. As in the Trinity, cultural creativity and fecundity will be a fruit of a process of dynamic communion and interdependence, mutual relations with peoples of other cultures, including that of the migrants.

The Catholic Bishops Conference of Japan (1992) refers to this creative synthesis that can be a fruit of the encounter between the host and the migrant cultures: "This effort to overcome differences between peoples does not mean trying to assimilate the others by imposing one's own lifestyle on them, but should be seen as bringing to birth a new society and culture within which we can all live together."⁵⁴

3. Provisional Conclusion

Our analysis as well as critical appropriation of the insights of Bourdieu and Kymlicka have helped us clarify some aspects in the notion of cultural rights of migrants. Cultural rights basically refer to rights to cultural expression, development and identity. These are primarily the rights of the individual in social-relation, to negotiate between cultures hopefully towards a new enriched synthesis. Polyethnic rights, a type of cultural rights which is group-specific, should only be claimed for external protections and not to control dissent within a cultural group. This exploration has left us with some hanging questions. While metics and other guest workers are entitled to cultural rights already protected in the UN Declaration of Human Rights and other legal instruments, can they be entitled as well to polyethnic rights? Is it also justified to distinguish between the rights of national minorities and immigrants?

From a theological perspective, we posited that the structure of the triune symbol provides us with a reference point for the values of a society that provides a space for cultural rights to flourish – relationality and mutuality, equality in diversity, creativity and fecundity. This right to self-expression, development and cultural identity in itself can be viewed, in the light of our faith, as a trace of the Trinity's creativity and fecundity within us.

⁵³ Edwards, *Jesus the Wisdom of God*.

⁵⁴ Catholic Bishops Conference of Japan, *Pastoral Letter Seeking the Kingdom of God which Transcends Differences in Nationality*, 5 November, cited by Graziano Battistella, "The Human Rights of Migrants," in *Exodus Series: a Resource Guide for the Migrant Ministry in Asia*, 25.

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