

MINORITIES IN NATION-BUILDING PROCESSES A VIEW FROM THEORIES OF EGALITARIAN LIBERALISM

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# MINORITIES IN NATION-BUILDING PROCESSES

A VIEW FROM THEORIES  
OF EGALITARIAN LIBERALISM

Zhidas Daskalovski

# **Minorities in Nation-building processes – a view from theories of Egalitarian Liberalism**

Zhidas Daskalovski

Friedrich Ebert Stiftung  
Skopje  
2005

**Publisher**

Friedrich Ebert Stiftung, Skopje  
Bul. Sveti Kliment Ohridski 21/1  
<http://www.fes.org.mk>

**Cover design and pre-press**

PROMO DSGN, Skopje

**Copies**

200

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CIP – Каталогизација во публикација  
Народна и универзитетска библиотека “Св. Климент Охридски”,  
Скопје

342.724:329.12  
329.12: 342.724

DASKALOVSKI, Zhidas

Minorities in nation – building processes – a view from theories of  
egalitarian liberalism / author Zhidas Daskalovski. – Skopje :  
Friedrich Ebert Stiftung, 2005. – 116 стр. : 25 cm

Библиографија: стр. 115-122

ISBN 9989-109-23-0

а) Малцински права – Либерално-егалистички теории - Македонија  
б) Либерално-егалистички теории - Малцински права

COBISS.MK – ID 62909962

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# Liberalism and Nation-building

## CHAPTER 1

### Introduction:

#### 1. Aims of this publication

Does not the sun shine equally for the whole world? Do we not all equally breathe the air? Do you not feel shame at authorizing only three languages and condemning other people to blindness and deafness? Tell me, do you think that God is helpless and cannot bestow equality, or that he is envious and will not give it?"

Constantine the Philosopher (Cyril), 9th Century A.D (Fishman 1968: 589)

The last decade of the 20<sup>th</sup> century has witnessed a renewed interest in the subject of the rights of national minorities among political theorists and legal experts. The resurgence of ethnic conflicts throughout a number of countries of the former Eastern block at the end of the bipolar world era, the growing importance of the politics of identity and recognition in some of the most developed states, and the reassessment of the strength of local cultures and languages against globalization, have all contributed to the current prominence of the issue of national minority rights in various academic disciplines, starting from political science, legal theory, and international relations, to sociology, anthropology, and nationalism studies.

How should we respond to cultural and ethnic differences in multiethnic states and to the different kinds of conflicting demands that emerge from them? Different ideologies offer different answers to this question. Ideological constructs such as ethnonationalism, fascism, and racism offer ugly and inhumane solutions. What about liberal theory's approach to the issue? This publication aims to tackle the theoretical question of whether liberal egalitarian political theory can explain and justify minority cultural rights, and, if so, to demarcate the scope of minority benefits given as rights. I am interested in exploring whether a liberal state can defend its nation-building program by neglecting demands by minority members for their own nation-building. Is the process of nation-building liberal if it is connected to 'minority nation-destroying'? Would a contemporary state that conducts such a course of action be following the creed of liberalism? Correspondingly, could we call such a state liberal?

In response to these question it is often mentioned that the commitment of liberal egalitarianism to liberty, state neutrality, individualism and the universality of human rights, and the equitable distribution of life chances prevents it from recognizing the durability and strength of the bonds of nationality, language, culture, religion, and custom. Many commentators have argued that liberalism should only treat these issues as backward, irrational or even pathological intrusions in civic life.

With this publication, I intend to contribute to a burgeoning debate among contemporary political theorists concerning what has been labelled as identity politics and/or multiculturalism. This publication will do so by providing a theoretical discussion interrelated to concrete cases taken from around the world. The method of my inquiry therefore, will be to analyse the liberal egalitarian principles in abstract form and then relay them to actual problems, controversies, and political discussions.

I will interpret liberal egalitarian theory within the context of a modern multicultural state and in relation to particular, real life demands or practices. This kind of approach to political theory offers three benefits:

“it can clarify the meaning of abstract formulations, secondly, it can provide access to normative insights that may be obscured by theoretical accounts that remain at the level of general principle, thirdly, it can make us more conscious of the blinkers that constrain our theoretical visions when they are informed only by what is familiar” (Carens 2000:2).

The novel point of this publication is therefore not only that it seeks to understand what liberal egalitarian principles have to say about minority rights in multiethnic societies, but that it leaps directly into applying this creed to a variety of specific circumstances. Political theory helps us understand and criticize various features of modern society. A well thought of theory can easily bring into discussion moral considerations about local practices throughout the world. Liberal ideas of the egalitarian kind discussed here are considered to be well equipped for a generally applicable theory, and my aim is to show that this claim is correct by deliberating upon a number of examples taken from around the world.

Moreover, the discussion of controversies about minority rights in Macedonia presents the reader with a fresh investigation about the confines of applied liberal egalitarian theory in the post-communist countries of Eastern Europe.<sup>1</sup> This publication will not be all-embracing in the sense that will cover all relevant cases concerning minority rights disputes. Due to space considerations it is impossible for me to be inclusive and to discuss the implementation of liberal egalitarian theory in all possible cases. This publication will contribute to an ongoing and extensive debate within the branch of political theory dealing with identity and minority rights, but it will not provide a definite and all-comprehensive account about this issues. The important point is that this publication will discuss relevant examples, principles and institutions that are important to the application of liberal egalitarian theory in practice.

In essence, this publication attempts to discuss whether liberal egalitarian theory can support state intervention on behalf of minority cultures. In other words, this publication will seek to answer the predicament that bothers a number of political scientists and philosophers: whether liberalism, and liberal egalitarian theory in particular, has the conceptual means to justify granting rights to members of minority cultures, and if so, what the proper scope of these rights should be. I will dwell upon the question whether the liberal state's concern for equality and freedom requires it to respect minority claims about culture and identity. The issues I want to address in this publication then are related to a number of questions such as: how can liberal theory respond to specific claims made in the name of known ethnocultural minority groups in a given society? Which claims related to the culture and identity of

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<sup>1</sup> The extent to which we can refer to the post-World War Two regimes in this European region as actually being 'communist' is of course debatable.

minorities can and should be supported by a liberal egalitarian theory? To what degree is liberal theory required to provide citizens with the same cultural framework and cultural resources for their choices? In short, how can we properly organize our society so as to reflect its diverse ethno- cultural character? What function can the liberal egalitarian theory have in the organization of such society?

The issues I will deal with here will not include the controversial question of the right to self- determination. My concern in this publication is solely over minority demands that do not raise the question of the status of the state. In other words, hereby I will only discuss how questions related to the organization of multiethnic states, which concerns how matters as education, media, and culture are dealt with within liberal theory. The focal point of this publication will be to answer if egalitarian liberal theory can productively accommodate the demands of different peoples in the aforementioned areas of life. The main argument of this publication is that a liberal egalitarian theory, with a commitment to equal respect for all citizens, should dedicate appropriate attention to claims for recognition and support in matters of culture and identity.

Consequently, the basic premise will be that the liberal theory in the egalitarian version, as presented by John Rawls and Ronald Dworkin, can support minority rights and is therefore, well equipped to deal with problems of a multiethnic nature. Promoting culture through minority rights is a human interest that should be legitimately taken into account in public decision making. A nation-building process that is sensitive to demands by ethnocultural minorities follows from arguments about equality and the importance of national identity and cultural membership for the individuals of minority cultures. Although, regrettably, in the real world the implementation of the liberal theory does not solve these problems, since existing states do not fully apply the ideals of the liberal theory, it is important to understand that the failures of implementation do not show that the theory is deficient.

## **2. Structure**

This publication then will have the following structure: after the introduction, the second chapter will outline the basic tenets of liberal theory, as exposed by Rawls and Dworkin, and describe the liberal ideal of state neutrality. In the third chapter, I will discuss the relationship between liberal neutrality and the nation-building process. I will then examine the problematic aspects of nation-building in contemporary liberal democratic states described by various multiculturalist advocates. I employ the premises of egalitarian liberalism to make a case for a just nation-building process in the modern state that would not go against the liberal theory. Thereby I argue in favour of liberal nation-building that takes into consideration minority protection. In the subsequent chapters I ask two questions: who benefits from minority rights within a just nation-building process and what is the extent and the scope of individual rights which the liberal theory can support within a fair nation-building? In the next to last chapter, I deal with the specific demands for minority rights, taking examples from throughout the world. Here, I use the typology of minority rights claims developed by Jacob Levy. Finally, in the last chapter I will briefly recapitulate the main ideas of this publication.



## CHAPTER 2

### Liberal Egalitarianism

As a political philosophy, liberalism was first formulated during the Enlightenment in response to the growth of the modern state. Liberalism originated in the seventeenth- and eighteenth- century struggles against the aristocratic state and established churches. Ever since, liberalism has appeared in various shapes in different times and places, depending on the circumstances or the enemies it confronts. The liberal state has typically been loyal to the following concepts: freedom, tolerance, individual rights, and constitutional democracy, which establish the limits of government, the right of the citizens against the government, and equality under the rule of law. Liberal theories believe that, on the one hand, individuals are the basic unit of moral value, and on the other, that the government is not a natural entity but remains necessary as long as it secures the conditions of various ways of life. Liberalism is in fact best understood “as a theory of the good life for individuals linked to a theory of the social, economic, and political arrangements within which they may lead that life” (Ryan 1995: 303).

Liberal theory is committed to the idea that people in a political society must be free, that no categories of human beings and ways of life have a legitimate claim to rule by natural or supernatural right; and, consequently, to the equality of people in political society. As a result, liberal theories share a commitment to the idea that the state’s role must be defined so that it protects the freedom and equality of all its citizens. Citizens are free to pursue their actions as long as they are within the bounds of the law, and do not harm other individuals (Mill 1910: 72-73). Individuals should be free because as John Stuart Mill put it, “the only freedom which deserves the name, is that of pursuing our own good in our own way” (Mill 1910: 115). Furthermore, liberal theories hold that any political society must be justified to the individuals who live within it to be legitimate, and that reason is the tool by which the liberal state governs. Today, there is no consensus among political thinkers and philosophers on what exactly liberalism is. However, all theories properly considered ‘liberal’ share a commitment to both the equal moral worth of persons and to tolerating of divergent points of view on how lives should be lived. Within this publication, I will concentrate on liberal egalitarianism, the strand of modern liberal theory most frequently espoused by the political theorists John Rawls and Ronald Dworkin, and its relationship to the process of nation-building.

Both Dworkin and Rawls are advocates of what is better known as liberal egalitarianism. Liberal egalitarianism supports the moral equality of all members of the community and demands that the state treat all citizens equally. If a theory supports equality among human beings, it should specify the best measure of equality. Various liberal egalitarians give different answers to the question where exactly citizens should be equal: welfare, resources for achieving welfare, income, satisfaction of needs, opportunities for welfare, consideration of desert, or satisfaction of their interests in leading a good life. Generally speaking, a person’s conception of the good life is his/her set of beliefs about how she should lead his/her life, about what makes his/her live worthwhile. Consider Ronald Dworkin famous description:

each person follows a more-or-less articulate conception of what gives value to life. The scholar who values a life of contemplation has such a conception; so does the television-watching, beer-drinking citizen who is fond of saying 'This is the life,' though he has thought less about the issue and is less able to describe or defend his conception (Dworkin 1985a: 191).

For Rawls a person's "good is the satisfaction of rational desire" and "a rational plan of life" (Rawls 1971: 93). I will not outline a resolution to the problem of measuring equality here, but instead focus on the aspects of liberal egalitarianism found in the works of Dworkin and Rawls that can help us best to deal with the controversies of the nation-building processes.

### 3. Rawls' Liberal Egalitarianism

In *A Theory of Justice*, Rawls is interested in devising principles for a comprehensive theory of justice. He focuses on the question of what constitutes justice, how to properly balance the competing claims and interests in given society (Rawls 1971: 3-6). Rawls is concerned with the basic structure of society, with what is the appropriate conception of justice and what, therefore, are the right institutions to establish. For him, the guiding idea is that the 'principles of justice for the basic structure of society are the object of the original agreement.' The original agreement is based upon an agreement among free and equal individuals all with their own interests to further. These principles of justice would regulate all other arrangements in society, so Rawls regards them as fair. Justice as fairness, in other words, is "to govern the assignments of rights and duties and to regulate the distribution of social and economic advantages" (Rawls 1971: 61).

Justice as fairness is premised upon the following two ideas: the original position and the veil of ignorance. Principles of justice, according to Rawls, should be understood as those that emerge from a hypothetical contract between individuals ignorant of certain aspects of their own circumstances and beliefs. Rawls supposes that we should treat persons as moral equals. For Rawls, all moral persons are distinguished by two features:

first, they are capable of having (and are assumed to have) a conception of their good (as expressed by a rational plan of life), and second they are capable of having (and are assumed to acquire) a sense of justice, a normally effective desire to apply and to act upon the principles of justice, at least to a certain minimum degree...We see, then that the capacity for moral personality is sufficient condition for being entitled to equal justice (Rawls 1971: 505).

Since all individuals are equal in the sense that they have a capacity for a sense of justice and a capacity for a conception of a good life, Rawls wants the principle of justice to be chosen under conditions that respect this essential equality of all persons. For Rawls, this conception of moral equality of persons is fundamental to a just society, for in his theory moral equality serves as an axiom rather than a theorem. According to Rawls, principles of social justice must apply to the deep inequalities presumable inevitable in the basic structure of any society.

The principles of justice are originally chosen behind a veil of ignorance so as to provide fair outcomes of the agreement. Since all behind the veil are equal in their capacities to reach an agreement, the results of the agreement will be fair and just. As Rawls put it, "the fairness of the circumstances transfers to fairness of the principles adopted" (Rawls 1971: 159). Under the veil, no one knows his/her exact social or economic position, gender, race, physical or mental abilities, or the conceptions of the good they hold. In Rawls' words, behind the veil "... no one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets, and abilities, his intelligence, strength, and the like" (Rawls 1971: 12). Since all are in an equal bargaining position, the principles of justice they create will be the result of a fair agreement or bargain. The veil of ignorance ensures that "no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances" (Rawls 1971: 12). It is important to note that the original position and the veil of ignorance are intended to capture the idea that "when we think about justice, these differences are or should be irrelevant and that people should be regarded as equal" (Mulhall and Swift 1992: 4). The veil reflects the idea that for the principles of justice, social and natural circumstances and endowments are "arbitrary from a moral point of view" (Rawls 1971: 15).

For Rawls, all individuals deserve to be put in an equal position to bargain the principles of just society, no matter how physically strong they are:

Perhaps some will think that the person with greater natural endowments deserve those assets and the superior character that made their development possible. Because he is more worthy in this sense, he deserves the greater advantages that he could achieve with them. This view, however, is surely incorrect. It seems to be one of the fixed points of our considered judgements that no one deserves his place in the distribution of native endowments, any more than one deserves one's initial starting place in society. The assertion that a man deserves the superior character that enables him to make the effort to cultivate his abilities is equally problematic; for his character depends in large part upon fortunate family and social circumstances for which he can claim no credit. The notion of desert seems not to apply in these cases... (Rawls 1971: 103-104).

Therefore, for Rawls, people in the original position can not justly expect benefits or burdens to be distributed on the basis of their social status, or natural talents or defects. So all

undeserved inequalities call for redress, and since inequalities of birth and natural endowment are undeserved, these inequalities are to be somehow compensated for....society must give more attention to those with few native assets and to those born into less favourable social positions (Rawls 1971:100).

If, different personal characteristics such as natural strength, or class position, were allowed in the process of bargaining, then the more powerful individuals would probably use their powers to negotiate a basic structure of the society that tends to their needs. On the other hand, "men who do not know to which class they belong can not design institutions, consciously or unconsciously, to favour their own class" (Dworkin 1989: 50). Given that no one knows the social position he/she would occupy after the veil was taken away, he/she would consider the fate

of every and each of one fellow contractors as as important as his/her own. Since no one knows what position they will occupy, “asking people to decide what is best for themselves has the same consequences as asking them to decide what is the best for everyone considered impartially” (Kymlicka 1990: 64). Under such circumstances, the agreement made in the original position would give equal consideration to the position of each and every person.

Rawls believes that people in the original position, behind the veil of ignorance, would agree that the society should be regulated by the two basic principles of justice. First, “Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of the liberty of all” (Rawls 1971: 302). Basic liberties for Rawls include political liberty, such as the right to vote and to be elected in public office, freedom for speech, conscience and thought, as well as freedom from arbitrary arrest and seizure according to the rules of law. The second principle sets the limits of social and economic inequalities: “Social and economic inequalities are to be arranged so that they are both (a) attached to offices and positions open to all under conditions of fair equality of opportunity, and (b) to the greatest benefit of the least advantaged” (Rawls 1971: 302). According to Rawls, citizens in the original position would agree upon the first priority rule; (the priority of liberty) that the first principle has lexical priority over the second, meaning that the basic liberties can not be sacrificed for greater social and economic advantages. ‘Lexical priority’ means that both of the rules are lexicographic forms of ordering being of a kind with the rule that dictates the position of words in dictionary. Additionally, under his second priority rule (the priority of justice over efficiency and welfare) Rawls contents that people in the original position would agree that the second principle of justice lexically precedes the principle of efficiency and to that of maximizing the sum of advantages, and that fair opportunity is prior to the difference principle (b); (Rawls 1971: 302-303). In each case, an element comes into play in, only when previous elements have made their contribution, as the second letter of a word comes into play in the ordering of a dictionary only after the first letter. We must “satisfy the first principles in ordering before we can move on to the second, the second before we can consider the third and so on. A principle does not come into play until those previous to it are either fully met or do not apply” (Rawls 1971: 43). The second rule of priority is mainly concerned with the relationship between the two parts of the second principle, prescribing that fair equality of opportunity should never be restricted out of consideration for the greatest benefit for the least advantaged. The above mentioned principles are, for Rawls, a special case of a more general conception of justice. For him, justice is that “all social values-liberty and opportunity, income and wealth, and the bases of self-respect- are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone’s advantage” (Rawls 1971: 62). In other words, injustice consists of inequalities that are not to the benefit of all.

According to Rawls, there are certain things or goods that every rational human being is presumed to want. These goods which he calls ‘primary’ are those goods that normally have a use whatever a person’s rational plan of life is. The goods we all need to pursue our well being in life, to pursue our ends, are goods we all prefer the greatest share of according to Rawls. In Rawl’s theory there are two kinds of primary goods:

Social primary goods- goods that are directly distributed by social institutions, like rights and liberties, wealth and income, opportunities and powers, rights and liberties, and self-respect;

Natural primary goods- goods such as health and vigour, intelligence and imagination, and natural talents, affected by the basic societal structure but not directly under their control or distribution.

If we assume a starting position in a society in which all social primary goods are equally distributed, subsequently this state of affairs, Rawls explains, is the benchmark for judging improvements. Thus, if certain inequalities “of wealth and organizational powers would make everyone better off than in this hypothetical starting situation, then they accord with the general conception.” (Rawls 1971: 62) In choosing the principles of justice, “people behind the veil of ignorance seek to ensure that they will have the best possible access to those primary goods distributed by social institutions (i.e. the social primary goods)” (Kymlicka 1990: 64).

To sum up, in *A Theory of Justice*, Rawls searches for principles of just and well-ordered society based on decisions people would make in an original position standing behind a veil of ignorance. The veil of ignorance, under which principles of social justice are reached, is a device meant to ensure impartiality. We discuss the principles of justice behind the veil so as to respect the equal moral worth of persons. The parties of the original position are free, morally equal persons; these conditions of freedom and equality, together with the veil of ignorance, “define the principles of justice as those to which rational persons concerned to advance their interests would consent as equals” (Rawls 1971: 19). The possession of a conception of one’s good and the capability of having a sense of justice is the reason to being entitled to equal justice. The principles chosen in the original position and the distribution of the primary goods determine how the moral autonomy of individuals can be maintained once we leave the original position. Rawls’ theory emphasizes the ideal of equality as treating all citizens as equals. In *A Theory of Justice*, Rawls aims at distribution of the primary goods, such as income, wealth, and the social basis of self-respect, according to principles of justice. People are responsible for the choices they make in life and outcomes where some will have more resources and success than others are just. Rawls is not, therefore, interested in equalizing welfare or the satisfaction of interests of the citizens, since what they do and how they fare in life is their responsibility.

## 4. Dworkin's Liberal Egalitarianism

Equality is central piece of the liberal theory Dworkin promotes. All persons and their plans of a good life, according to Dworkin, should be given equal concern and respect. The government is obliged to treat those whom it governs "with concern, that is, as human beings who are capable of suffering and frustration, and with respect, that is, as human beings who are capable of forming and acting on intelligent conceptions of how their lives should be lived" (Dworkin 1978a: 272). Dworkin, like Rawls, sees human persons as rational beings capable of framing a concept of well-being in life. From a moral point of view, all humans possess these characteristics and can not be treated in a different way but as equals. Alternatively, for Dworkin differences of moral weight among individuals "can be justified only if they rest on relevant reasons, which are (by hypothesis) absent" (Galston 1991: 91).

Taking this perspective on human morality, Ronald Dworkin's egalitarianism like Rawl's theory is highly conscious of the injustices associated with social class and the unfair consequences of family background on people's development through future life. For him, as for Rawls, it is unacceptable that persons, who are born through no fault of theirs with a physical or mental disability, lead a life of poverty, while those who inherit powerful physical capabilities or a great wealth from their parents live a rich life. Justice for Rawls requires compensation or removal of undeserved or "morally arbitrary disadvantages, particularly if these are profound and pervasive and present from birth" (Rawls 1971: 96, 510). Dworkin also, believes that natural circumstances and endowments are arbitrary from a moral point of view; instead, choices people make should be relevant to as what individuals deserve. Therefore, for Dworkin, liberal egalitarianism should strive to make the effects of individual choices predominate over those of personal luck:

When and how far it is right that individuals bears disadvantages or misfortunes of their own situations themselves, and when it is right, on the contrary, that others- the other members of the community in which they live, for example- relieve them from or mitigate the consequences of these disadvantages? Individuals should be relieved of consequential responsibility for those unfortunate features of their situation that are brute bad luck, but not from those that should be seen as flowing from their own choices. (Dworkin 2000: 287)

Dworkin concedes that inequalities result from the unfettered market, given differences in natural endowments combined with the laws of inheritance. He argues that "unlike the differences in preferences" the differences in well-being caused by such factors are "indefensible according to the liberal conception of equality" (Dworkin 1978b: 132). According to Dworkin, liberal egalitarianism requires that while each individual enjoys an expensive set of rights and liberties, certain distribution of resources is necessary by the government in order to ameliorate the inequalities in natural circumstances and endowments and market failures (Dworkin 1987). In Dworkin's view, the government, through policies of redistribution, needs to strive to achieve equality of resources (Dworkin 1981). Equality of resources however, is not a simple equality of the overall share of resources, something alike the same bank-account balance, for this would be contrary to Dworkin's emphasis on

the importance of choices individuals make in life. So, “equality requires that such choices be made with an eye to their consequences for others, and that people’s resources should therefore be sensitive to the choices they make” (Dworkin 1996: 45). Differences in resources people hold that are due to people’s choices are their own responsibility. Liberalism, for Dworkin, cannot be responsible for inequalities that result from free choices made by individuals. However, Dworkin holds that no individual share of resources should be diminished simply because of the bad luck in the natural and social distribution of endowments: an equal distribution of resources should be ‘an ambition sensitive’, but ‘endowment-insensitive’ (Dworkin 1981a: 311).

To illustrate how equality of resources might be achieved Dworkin gives as an example a hypothetical group of people shipwrecked on an island with abundant resources of many different kinds. Each person is entitled to an equal share of some neutral currency and employs this share to purchase a bundle of goods in a general auction (Dworkin 1981). The auction is repeated until everyone is happy with the goods he/she has purchased yielding an equal distribution of resources in which no one ‘envies’ the resources others have. Equality of resources, for Dworkin, is achieved when the value of each person’s bundle of goods and resources, measured in terms of the opportunity-cost it imposes on others, is the same. The basic idea is that if I appropriate some resource that is relatively precious to other people then, for equality to be established, they should be able to appropriate other correspondingly valuable resources instead. This idea works well in a hypothetical situation in which people have identical physical endowments and handicaps. However, once the auction is complete, people are free to labour and manufacture, trade and invest, as well as consume, and then the (dis)advantages in talent and health and sheer luck would produce unequal outcomes in the resources people have. As a remedy, Dworkin suggests that at the initial auction, people are offered insurance policies for protection against a variety of risks, including accident, sickness, and low income, in return for premiums that the auction would fix, subject to the stipulation that the premium for any particular coverage be based on average rather than individual actuarial risk. In other words, the hypothetical insurance market identifies premiums that rational actors would choose if they faced equal risks of benefiting or suffering from advantages and disadvantages in abilities, luck, and the like. For Dworkin “to the extent that people chose to purchase such policies in the auction, sacrificing other resources to do so, the post-auction situation would produce less envy” (Dworkin 1996: 48).

Moreover, Dworkin proposes that in real world situations, we model the system of taxation and redistribution, either in funds, in opportunities for employment, or in resources like medical care on that hypothetical insurance market. We can ask “what insurance people with equal resources and with the knowledge and attitudes most people in our community actually have, would have purchased on those terms” (Dworkin 1996: 48) Dworkin argues that we can identify the minimum requirement of distributive justice when faced with such arbitrary inequality such as natural endowments or genetic luck, “by asking how much someone would have bought in an insurance sub- auction...against the possibility” of such an endowment deficit (Dworkin 2000: 82). Although we can not be sure how much exactly anyone would invest in insurance, we can nevertheless use approximate answers

to design a progressive tax system: the aggregate taxes levied in that design would equal the premiums that it is plausible to assume would have been paid, and redistribution to the sick, unemployed and poor would equal the total insurance coverage those premiums would have bought (Dworkin 1996: 48).

Even though this system of redistribute taxation would not be able to fully meet the envy test, Dworkin believes that it would unproblematically reduce inequality of resources. For Dworkin, this is a just system because it aims to distinguish, and correct for, the effects of differences of talent and ability while in the same time requiring individuals to accept the consequences of how they choose to use their abilities and live their lives.

## 5. Dworkin's and Rawls' Egalitarian Liberalism and State Neutrality

Although Rawls and Dworkin have different visions about how the liberal state should be organized and what principles should be used to govern society, both share a fundamental belief in the equal moral worth of persons and consequently, seek societal institutions that treat all people as such. Both Rawls and Dworkin, together with other liberal theorists like Nielsen or Barry,

disagree over which principles of social justice are to be adopted, but they all in some sense are egalitarians and argue that justice as impartiality requires (where possible) the elimination of morally arbitrary inequalities, namely those inequalities arising from differences in social circumstances and natural talents (Nielsen 1992: 90).

Dworkin indeed, insists that equality is the basic value of liberalism. On his view, liberalism, despite the semantic connection with liberty, has no fundamental commitment to it, but only to commitment to those liberties which are necessary if we are to treat people as equals. Liberals, according to Dworkin, do not value liberty more than equality, rather they value liberty only because they value equality (Dworkin 1985c). Rawls, on the other hand, stipulates an original position in which all involved in the process of choosing the institutional design of society have equal power. Due to the specific design of the original position, all individuals promote their interests by equally taking account of the interests of the other people in the original position. Equal respect and concern for all is underlined by this situation. Moreover, Rawls specifies an equal distribution of all social primary goods as something demanded by principles of justice. People have capacity to have a conception of a good life and give justice and therefore to be treated as worth of equal respect and concern. Equality for Rawls is of essential importance:

Some writers have distinguished between equality as it is invoked in connection with the distribution of certain goods, some of which will almost certainly give higher status or prestige to those who are more favoured, and equality as it applies to the respect which is owed to persons irrespective of their social position. Equality of the first kind is defined by the second principle of justice....But equality of the second kind is fundamental. (Rawls 1971: 511).

The right to equal respect and concern is the founding block of Rawls' justice as fairness. If the state is to have an equal respect and concern for all

individuals because they are moral persons with conceptions of good life and a sense of justice, then it must treat all their understandings of well-being in life as equally important. This assumption leads us to the liberal neutrality of the state. The prospects of liberal neutrality, as assumed and espoused by modern political theorists including Dworkin and Rawls, are going to be of a vital importance for our argument about the possibility of liberal nation-building.

According to the postulates of modern liberal theory, the state's enhancement of freedom and equality is based on three theses: that the state has the best chance of securing freedom and equality of its citizens when it is organized as a democracy, that the state can ensure freedom only by pursuing policies that implement toleration and freedom for consciences for all citizens; consequently, the state must stay out of the individual's autonomous construction of his/her own life plans- his/her 'conception of the good.' (Cf. Hampton 1997: 179-181, Weithman, 1999, Waldron 1987, 2000, Zvesper 1987) The final thesis reflects the support of modern liberal theory to the idea of state neutrality towards the disputed questions of what constitutes the good life. Liberal neutrality means that public action should disregard all differences among citizens including family loyalties, individual, national or religious affiliations, or economic position, so as to treat them all as equals. This version of liberal theory advocates a 'non-perfectionist state' and is directly contrasted with a 'perfectionist understanding' of liberalism advocated by a number of political scientists. Rawls introduced the concept of 'perfectionism' as a kind of theological theory that aims at fulfilling ethical ideals. (Rawls 1971) He argues that classical liberalism is typically anti-perfectionist, since in general it conceives of politics as instrumental for individual ends, and purposes, and as a guarantee of rights and order. Yet, Rawls stresses that liberalism as a political ideal is not morally empty, but includes a set of distinctive virtues and purposes. This difference is "what characterizes the debate between perfectionist or ethical liberalism and neutralist or political liberalism" (Rawls 1971: 51).

The differences between the two approaches are the following: on the one hand many prominent liberals (Ackerman 1980, Dworkin 1985a, Kis 1996, Rawls 1971, 1993) believe that, as a matter of practical politics, liberal theory requires state neutrality between conceptions of the good, i.e., "that the state should not justify its legislation by appeal to some ranking of the intrinsic worth of particular conceptions of the good" (Kymlicka 1998a: 133). Such an approach prevents any particular conception of the good life from being favoured. Neutrality therefore ensures fair treatment for all citizens. For these liberal thinkers, the liberal state is desirable because it does not promote any specific way of life. Liberalism in other words, does not prescribe how people should lead their lives. Other liberals, on the other hand, such as Joseph Raz, William Galston, and George Sher, believe that certain ideals, such as autonomy or diversity, are superior then other conceptions of the good and are therefore, conceptions of the good life which the state ought to promote. (Galston 1995, Raz 1986, Sher 1997) According to these liberals, the liberal state is justified because it is designed to foster specific virtues and to permit, insofar as possible, the unhindered pursuit of liberal goals. For perfectionist liberalism, distribution of resources and opportunities in a community can properly be influenced by judgements made by the state about the value of different conceptions of the good. Perfectionist liberalism has therefore, firm moral foundations where the function of the government is to promote and protect the well-being of the people. Thus, the foundations of perfectionist liberal theory as advocated by Raz, for example, have the characteristic whereby "its doctrine of freedom is moored in a wider conception of the good person and the good society, rather than being cut off from them as it is the

case with liberal doctrines of moral neutrality and others” (Raz 1994:107). Liberalism is therefore more than just political morality; it is a “political morality which arises out of the view of the good of the people, a view which emphasizes the value of freedom to individual well-being” (Raz 1994: 160). Raz believes that if governments are to ensure the social conditions of freedom, they must invoke public support for the cultural structures based on public ranking of the intrinsic merits of competing conceptions of good.

...people prosper through a life of self- definition consisting of free choices among a plurality of incompatible but valuable activities...This value pluralism, and not skepticism, or value neutrality, is the liberal bulwark against uniformity...A government dedicated to pluralism and autonomy can not make people good. To be autonomous, they have to choose their own lives for themselves. Governments...can help people flourish, but only by creating the conditions for autonomous life, primarily by guaranteeing that an adequate range of diverse and valuable options shall be available to all (Raz 1994: 105).

Value pluralism or autonomy are thereby promoted by governments and should be supported by all citizens regardless of their conceptions of good life. In general, liberal perfectionism takes the view that promoting of human excellence is one of the factors that should be weighed in judging the political and social worth of a society. The government can and should act to promote the good and make lives better. Supporting valuable ways of life is “social rather than an individual matter...perfectionist ideals *require public action* [emphasis added] for their viability” (Raz 1986: 162). To summarize, perfectionist liberalism argues that some forms of human activity or experience have special value, and that as a result, a policy of furthering this special value should play a part in some aspects of our conduct toward others, including some social and political decisions made by the government. A perfectionist liberal state would decide issues of public policy, “on the basis of how best to promote a particular conception of the good life which has been judged to be the most rewarding or fulfilling” (Kymlicka 1998a: 138).

According to the anti-perfectionist position espoused by liberal neutrality, the state has no stake in the promotion of morality or of any convictions of good life of its citizens. Both Rawls in *A Theory of Justice* and Dworkin in *A Matter of Principle* espouse liberal theories not dominated by any particular conception of the good. Rawls insists that his theory of justice depends upon ‘no particular theory of human motivation’; while Dworkin submits that his liberalism ‘does not rest on any special theory of human personality.’ For Dworkin, Rawls and other contemporary liberals the government has no responsibility to teach its citizens about a virtuous being, people are free to change their minds about what is good for them in life. Modern liberalism, thus, is underpinned by the denial that there is any one way in which it is best to live. We could recall that J.S Mill claimed that a “person’s own mode of laying his existence is best, not because it is the best in itself, but because it is his own mode” (Mill 1910: [133]).

Liberals like Dworkin and Rawls agree that “no life goes better by being led from outside according to values that the person does not endorse” (Kymlicka 1990: 203). No one, including the government, may be in better position than I am to know my own good. Even if, as perfectionist theories claim, there is a single way of life worthier than others, if the state imposes it to the citizens this might affect their individual freedom-it is better for people to choose their own way of life than to have a way of life imposed on them. Consider Rawls’ comment that in a liberal state,

“people do not use the coercive apparatus of the state to win for themselves a greater liberty of larger distributive shares on the grounds that their activities are of more intrinsic values. Perfectionism is denied as a political principle” (Rawls 1971: 329). Liberal neutrality is therefore, anti-perfectionist, since the government is neutral among the different conceptions of the good “not in the sense that there is an agreed public measure of intrinsic value or satisfaction with respect to which all these conceptions come out equal, but in the sense that they are not evaluated at all from a [public] standpoint” (Rawls 1982: 172). Neutrality in a liberal sense is then “meant to fulfil the liberal ideals of impartiality, non-discrimination and equality of respect by means of an anti-perfectionist attitude” (Galeotti 1999: 38). A liberal neutral state allows all individuals to lead their own lives according to the judgements about what gives value to life and allows these individuals to freely question their opinions. Consequently, the liberal state does not attempt to influence these judgements, neither does it justify its actions on the basis of the intrinsic superiority or inferiority of conceptions of the good life.

Although the origins of the idea of political neutrality reach back to the emergence of religious toleration in the sixteenth and seventeenth centuries, the debate about the liberal concept of neutrality has been recurrently on the agenda of political theorists and liberal thinkers (Kis 1996: 1). The dominant interpretation of this notion among contemporary liberals is that the state must evince impartiality or neutrality towards different conceptions of the good. The liberal state does not take a position on the validity of a person’s belief about what constitutes the good life: this is the liberal commitment to tolerance and the neutrality of the state. Neutrality is understood as passive impartiality: government and its institutions- the basic structures -advance in a strictly procedural way and are separated from ideas about the good life, as proclaimed and practised by diverse society subcultures in society. The state should not reward or penalize particular conceptions of the good life, consequently, governmental actions should not aim to eliminate or discourage lifestyles that are, according to popular beliefs deviant or immoral. Rather, a liberal state should provide a “neutral framework within which different and potentially conflicting conceptions of the good can be pursued” (Kymlicka 1989b: 883). The government “should be committed to tolerating the views and cultures of its people and, in general, committed to staying out of individuals’ decisions regarding the best way to lead their lives” (Hampton 1997: 173).

Accordingly, individuals are left to autonomously mould, or pursue their own ideas of the good life. Liberalism on this view requires the

absence, even prohibition of any legal or governmental recognition of racial, religious, language, or [cultural] groups as corporate entities with a standing in the legal or governmental process, and a prohibition of the use of ethnic criteria of any type for discriminatory purposes, or conversely for special or favored treatment. (Gordon 1975: 105)

Thus the state should be neutral between conceptions of the good in public policy and law. As a result, within a liberal state, Christians, Jews, Muslims, Buddhists, atheists, agnostics, Macedonians, Albanians and Serbs may all equally freely pursue the way of life proscribed to them by their religion or national characteristics.

Furthermore, as argued by liberal theory, every individual has an equal moral status, and hence is to be treated with equal concern and respect by the government. Consequently, liberalism guards the civil and political rights of all citizens equally regardless of their group membership, be they cultural, ethnic,

professional or other. Within the liberal theory, rights are referred to individuals only, not to societal groups, no matter what kind of groups they are. To the degree that the right of free association is concerned, liberalism supports the principle that all societal groups, including those based on ethnic lines, are guaranteed maximum freedom in their self-organization according to the views and requirements of their members. Liberal individualism insists on “respect for each individual’s capacity to understand and evaluate her own actions, to make judgements about the value of the communal and cultural circumstances she finds herself in” (Kymlicka 1989a: 254). On this view, the state tolerates different conceptions of the good in the ‘private’ realm of civil society, while it “should be neutral, blind, and indifferent to differences in order to treat everyone equally” (Galeotti 1993: 591).

Although the liberal state is agnostic about the truth or the falsity of different life perspectives of the citizens, this does not mean that the government is neutral in relation to all moral values and doctrines. The state is, for example, not neutral as regards the basic concept of neutrality applied to its institutions: “liberals regard neutrality not only as a value that legislators ought to be constrained by, but also as a value that they ought to enforce on other people...in regard to the behaviour of the people under him, the legislator is not to be neutral about neutrality” (Waldron 1993: 157). Neither is the liberal state neutral among conceptions of the good that deny the equal moral worth of persons. The liberal state is not neutral between the concepts of the good life of rapists, and fundamentalists on the one hand and art lovers on the other. Neither can the liberal state be neutral between all people’s activities that they perceive as contributing to their conception of what is a good life and how it should be led. The liberal neutral state is not committed to displaying neutrality to those persons whose actions harm others and break the law. As Mill argues, ‘the sole reason for which power can be rightfully exercised over any member of a community...is to prevent harm to others’ (Mill 1910: [68]). One can therefore, pursue his/her conception of the good as long as he/she does not harm other persons doing so.

Liberal neutrality does not assume that the state should be neutral on questions of justice and right. The state is justified in protecting the people’s essential rights, springing from the commitment to the equal moral worth of persons, and this is why it is required to protect people from murderers and rapists. Neutrality for liberals is not “with respect to questions of the right or justice, but with respect to questions of the good, with respect to judgements about what makes a life good or valuable” (Mulhall and Swift 1992: 30). To the liberal, the interests of all individuals leading as a good life as possible matter equally, and on that view the state cannot be neutral in respecting the subordination of women’s interests to those of men. The priority of justice accounted for by holding that “interests requiring the violation of justice have no value” (Rawls 1971: 31). If the liberal state gives preferences to some concepts of well-being over others, then it would fail to treat all citizens as equals and would be unjust. For liberals who favour neutrality, the right is prior to the good in the sense that “the rights which people have, and which it is the job of the state to protect, come first, and stand as constrains on the conceptions of the good which people can choose to pursue” (Mulhall and Swift 1992: 31). Put differently, “the principles of right, and so of justice, put limits on which satisfactions have value; they impose restrictions on what are reasonable conceptions of one’s good.... can express this by saying that the concept of right is prior to that of the good” (Rawls 1971: 31). The considerations of the right are prior and independent of considerations of the good.

The requirement for neutrality then does not oblige the liberal state to be neutral between absolutely everything which people do, or between everything they perceive as good for the conceptions of well-being. As Dworkin comments, liberal quality can not be neutral globally as “any political theory must disapprove other theories that dispute its principles, liberal equality can not be neutral toward ethical ideas that directly challenge its theory of justice” (Dworkin 1990: 112). Neither is liberal neutrality compromised when “...a thief is punished who claims to believe that theft is central to a good life” (Dworkin 1990: 112). Under this view the liberal state is not committed to a policy of complete and restricted *laissez-faire*. Much like a referee in a football game, the liberal state allows freedom within the rules of the game or the law.

Neutralists conceive the state as having an essentially secondary role in the lives of its citizens. A referee in a game of football does not himself play football. He simply administers the rules within which others play the game. Similarly, the state is not itself to pursue the good life- whatever that may be-, it is simply to establish and maintain the ground rules within which others can engage in that pursuit (Jones 1989: 118).

The state is then neutral in a restricted way, since it is neutral between the conceptions of the good and not on matters concerning justice or the right.

What exactly does the principle of neutrality among the competing conceptions of the good life held by citizens consist in then? There are, broadly speaking, two versions of the ideal of liberal neutrality: neutrality with respect to reasons for state action, or justificatory neutrality, and neutrality with respect to the outcomes of state action, or consequential neutrality. (Kymlicka 1989b). On the one hand, neutrality might be understood as requiring governments in their actions to have an equal impact on all conceptions of the good. On the other hand, neutrality can be understood as imposing restrictions on the state justifying policies by appeals to any kind of perfectionist judgements. Thus the state must refrain from taking a stand on the comparative worth of different conceptions of the good life when formulating public policies and determining the allocation of resources.

Consequentialist neutrality is impossible to implement in practice, for we would run into difficulties over how to measure the satisfaction of each person with the rules and laws passed by the state in order to equalize them. Moreover, “once we adopt this consequences-based account of neutrality, it becomes doubtful whether any law could in principle be neutral between competing conceptions of the good” (Mendus 1989: 84). Since virtually all political decisions “will in fact differentially effect those with various conceptions of the good” (Dimock 2000: 193), governments will be limited in their actions. Besides, consequentialist neutrality is inconsistent with the principles of individual responsibility for the acts we undertake. A state that “embraced consequential neutrality would have to aim at making each person’s conception of the good equally easy to implement, irrespective of the costs to others that this might entail” (Macleod 1998: 191). This, as we have seen in the exposition of Dworkin’s position, is incompatible with the ideal of having persons be responsible for the lives they choose to lead. In like manner, Rawls states that individuals should not be burdened for circumstances which are out of their control, such as different natural and social endowments.

Justificatory neutrality is reflected in the familiar thought that the rules and distributional systems that determine the shape of the social setting in which individuals are free to pursue their conceptions of the good must themselves not be designed to help or hinder any conception of the good, if the state is to be neutral between the conceptions of the good (Dimock 2000: 198).

Under justificatory neutrality with respect to reasons, no political action is undertaken or justified on the ground that it promotes an ideal of the good, nor on the ground that it enables individuals to pursue an ideal of the good. Justificatory state neutrality means that the state can not pursue policies on the grounds that conceptions of the good are true or false. Consider also Joseph Raz's remarks on what he calls the exclusion of ideals:

Excluding conceptions of the good from politics means, as its simplest and most comprehensive, that the fact that some conceptions of the good is true or valid or sound or reasonable, etc., should never serve as a reason for any political action. Nor should the fact that a conception of the good is false, invalid, unsound, unreasonable, and so on., be allowed to be a reason for a political action. (Raz 1986: 136)

The government's actions might affect the prospects of the good life of people differently and be still considered neutral, if the rationale was not related to any particular conception of good life, but to an independent objective. Importantly, the neutrality in question "is to prevent some citizens and power holders from showing disrespect for other citizens by forcing on them policies based on conceptions of the good these others reject" (Sinipoli 1993: 652). Evidently, this conception of neutrality is burdened by the fact that it

invites sophistry of one form or another: it is notoriously difficult to establish what the motivation is behind any particular piece of legislation and, given this fact, neutrality in motivation may simply be the fig leaf with which to disguise antagonism towards a particular group or groups (Mendus 1989: 130).

How do Rawls and Dworkin view the role of liberal neutrality? Rawls, in *A Theory of Justice*, presumes neutrality when he speaks of the original position. For Rawls, his theory of justice is neutral among conceptions of the good and the original position provides a kind of 'Archimedean point.' The veil of ignorance secures neutrality of justification between competing conceptions of the good. Decisions about social institutions are made by people behind the veil of ignorance, who lack knowledge that would enable them to choose in a partial, selfish manner. Since no one knows his own conception of the good, no one is in position to ask for a particular concept of well-being to be imposed on others. By using the veil, the principles of justice Rawls arrives at are independent of all socially-acquired and therefore contingent moral ideas and conceptions. No social circumstance, such as unequal bargaining power or differing conceptions of the good, affect the principles agreed to under the veil of ignorance. Under such conditions, the two principles Rawls comes up with are to be seen as neutral principles in the relevant sense. Still, according to Rawls, people in the original position would want the most extensive set of primary goods as possible. The primary goods such as liberty, wealth, opportunities, and the bases of self-respect, are for Rawls, instrumental for people forming and pursuing their conceptions of the good life, and are consistent with state

neutrality. Everybody wants primary goods since they are valuable in advancing their ways of life. For Rawls then, the domain of primary goods outlines the limits of the right; the legislator needs to see that they are provided to all citizens without discriminating between the conceptions of good life they hold.

At this moment, it is important to stop our discussion for a second and note that after many authors criticized Rawls' view that primary goods provide neutral values for achieving different conceptions of the good, he changed his position on the matter in subsequent works. It has been claimed that

"Rawlsian primary goods are necessary to achieve liberal life-styles, but they are antithetical to more traditional family-centred or religiously-centred conceptions of the good...he does not think that the primary goods he has identified are not independent of any particular conception of the good, but that they are the instrumentally necessary means for living an autonomous life. Thus, he has come to privilege one conception of the good, namely, that of an autonomously chosen life, over others and so has adopted a perfectionist theory" (Dimock 2000: 195).

Since our aim is to consider a case for liberal nation-building based on the position Rawls develops in *A Theory of Justice*, this shift in his thinking will not be of our concern.

Similarly to Rawls' position in *A Theory of Justice*, Dworkin's theory holds that the rights that an individual possesses in the liberal society that protects his/her fundamental liberties derive from the principle of equal respect and concern. The domain of right and its primacy over the good is honoured by the government's respect for the fundamental rights of all citizens. The ultimate justification for these rights is "that they are necessary to protect equal concern and respect" (Dworkin 1985a: 198). These rights function as "trump cards held by individuals; they will enable individuals to resist particular decisions in spite of the fact that these decisions are or would be reached through the normal workings of general institutions that are not themselves challenged" (Dworkin 1985a: 198). Liberty protecting rights can not be traded for resources or material goods, they are fixed concepts. As Dworkin point out, "though the outcome of the auction-like procedures...liberty is not part of this outcome, but is instead fixed in the baseline of any auction equality of resources accepts" (Dworkin 1987: 52-53).

Dworkin's ultimate abstract principle equality requires that governments "make the lives of those it governs better lives", but in doing so "it [they] must show equal concern for the life of each" (Dworkin 1987: 52-3). For Dworkin, equality is the founding principle of liberalism and neutrality is its normal practical consequence. He construes neutrality as flowing from considerations of equal respect and concern. Liberal theory's "constitutive morality provides that human beings must be treated as equals by their government, not because there is no right and wrong in political affairs but because that is what is right" (Dworkin 1985a: 203). Consequently, for Dworkin, liberal neutrality is comprehended as "the independence of political decisions from any particular conception of the good life, or what gives value to life" (Dworkin 1985a: 191). Since the citizens "of a society differ in their conceptions [of what the good life consists in] the government does not treat them as equals if it prefers one conception to another, either because the officials believe that one is intrinsically superior, or because one is held by the more numerous or powerful group" (Dworkin 1985a: 191).

As we saw in the beginning of this publication, Dworkin makes a distinction between what people need and what they choose to do in their lives. Those

individuals who by no fault of theirs suffer from disabilities, according to Dworkin, should be compensated by the government. The circumstances which are beyond the control of the individuals which make it more difficult for them to satisfy their conceptions of good life should be redressed. However, individuals who have preferences for expensive lifestyles do so by their choice and need not be compensated even if they fail to achieve their conceptions of good life. As we have seen, both Dworkin and Rawls make a difference between deserved and undeserved outcomes. Their egalitarian liberalism is committed to distinguish between those aspects of a person for which he can be held morally responsible, such as what he/she chooses to do in life, and those aspects that are beyond his/her control and for which he/she can not be held responsible. Rawls for example, discusses what justice requires regarding people with expensive tastes, arguing that:

...as moral persons citizens have some part in forming and cultivating their final ends and preferences. It is not by itself an objection to the use of primary goods that it does not accommodate those with expensive tastes. One must argue in addition that it is unreasonable, if not unjust, to hold such persons responsible for their preferences and to require them to make out as best they can. But to argue this seems to presuppose that citizen's preferences are *beyond their control* as propensities or cravings which simply happen. Citizens seem to be regarded as passive carriers of desires. The use of primary goods, however, relies on a *capacity to assume responsibility* for our ends. This capacity is part of the moral power to form, to revise, and rationally to pursue a conception of the good (Rawls 1982: 168-169).

Dworkin too rejects that persons with expensive tastes should obtain more resources than other people receive, even though that those with more expensive tastes will not be able to satisfy their conceptions of good life to the level as the persons with less expensive tastes will. For Dworkin, thus, preferences for champagne are simply expensive choices of well-being in life given that the market price of champagne is relatively high.

Tastes as to which people differ are, by and large, not afflictions, like diseases, but are rather cultivated in accordance with each person's theory of what life should be like. The most effective neutrality, therefore, requires that the same share be devoted to each, so that the choice between expensive and less expensive tastes can be made by each person for himself, with no sense that his overall share will be enlarged by choosing a more expensive life or that, whatever he chooses, his choice will subsidize those who have chosen more expensively (Dworkin 1985a: 193).

People, who will have expensive choices for achieving good life, then have no grounds for societal support in their endeavours greater than what other people deserve.

In a capitalist state, the market will decide which choices of good life will be more or less expensive. Under such circumstances, some conceptions of the good life will be easier to pursue and will gain adherents, while others may be so difficult to achieve that they might lose all its supporters. If the liberal state is neutral about the different conceptions the citizens hold about what is valuable for their well-being, some conceptions of the good life, cultures or some cultural activities will flourish while others will fail miserably. Rawls, in his justice as fairness believes that good ways of life will sustain themselves in the cultural market place without state assistance, because in conditions of freedom, people are able to recognize the worth

of good ways of life and will support them (Rawls 1971: 331-332). Dworkin's position is ambivalent since he emphasizes the society's duty to protect cultural structure from 'debasement or decay.' (Dworkin 1985a: 218) This is a point I will return to in a detailed manner later in the text.



## CHAPTER 3

### Liberal Theory and Nation-building

"I understand the world as a field for cultural competition among the peoples."

(Gjorgji 'Goce' Delchev, moderate leader of the 19<sup>th</sup> century Macedonian national movement)

### 6. Identifying Conceptual Terms

Before setting to tackle the task outlined at the beginning of this publication, we need to have a clear meaning of the concepts employed in the discussion. As our enquiry whether liberal egalitarianism can support national cultures deals with the concept of the nation, nationalism is the first term that needs defining. In the last decade of the twentieth century, nationalism, as an academic discipline, has been characterized by an ever-growing production of books, academic articles, and monographs. Despite the mounting interest in the field, some of the basic terms and concepts such as the 'nation', 'nationalism', or 'national minorities', remain vague and open-ended. As Anna Triandafyllidou writes, "nationalism and, indeed, the nation itself appear in an ever greater diversity of forms and configurations, changing and constantly reinventing the phenomena that scholars have meticulously tried to fit into analytical categories" (Triandafyllidou 1998: 127) In fact, today "the category nation and its derivatives- nationalism, nationality, nation-states, and so on....are really 'multiple synonyms with floating referents'" (Tishkov 2000: 639, Cf. Brubaker 1995: 127-8). The academic heteroglossia in the fundamental terminology can not be useful for the purposes of this study.

What is a nation then? An oft-cited definition is taken to be Ernest Renan's understanding of the phenomenon:

A nation is a grand solidarity constituted by the sentiment of sacrifices which one has made and those one is disposed to make again. It supposes a past, it renews itself especially in the present by a tangible deed: the approval, the desire, clearly expressed, to continue the communal life. The existence of a nation (pardon this metaphor!) is an everyday plebiscite: it is, like the very existence of the individual, a perpetual affirmation of life (Renan: 9-10).

This definition closely corresponds with Max Weber's definition of nations as 'communities of sentiment.' Following Brian Barry, we may take Weber's definition of nationalism as a 'common bond of sentiment whose adequate expression would be a state of its own, and which therefore normally tends to give birth to such a state', and understand the nation as 'a group of people bound by the ties of fellow- feeling, mutual loyalty, solidarity, a sense of common belonging and a common history, *wishing* to live together as a separate community.' Therefore, [for a nation to be] 'the people should have a sense of shared political destiny with others, a preference for

being united with them politically in an independent state, and preparedness to be committed to common political action' (Barry 1999: 287).

On the other hand, I will define ethnic groups, or 'ethnonations', much as Barry has done so. Barry uses his argument on the definition developed by one of the most distinguished scholars in the field of nationalism, Anthony Smith. Thus, an ethnic group is: "a group defined by descent without requiring (even the myth of) common descent from a single ancestor....The significant point about ethnicity is negative: that it is not (generally speaking) possible to join an ethnic group by an act of will...." (Barry 1999: 281). States can be formed by a single ethnic group, but in all probability they are an amalgam of a number of ethnic groups, some numerous, others less so. The relations between the groups are often contested, especially if the members of the biggest ethnic group want to claim the state and its institutions as exclusively theirs. Minority individuals in such situations utilize resources to equalize their rights and duties to the state. At times, though, members of smaller ethnic groups strive for separation from the existing state. In this respect, they can be seen as being ethnonations, i.e., ethnic groups with the potential to become nations and have their own state. We can define the state in Weberian terms as being an administrative apparatus employing a monopoly of legitimate force within a particular territory.

Ethno-nationalistic expressions are concerned about putative collectives of peoples and are by this very nature, exclusive of the larger community of citizens, or of the nation. These expressions relate to the whole citizenry in the given state, but are only or mainly concerned with the problems or issues of a selected community. Under such understanding of the basic terms, of 'nation' and 'ethnic group/ethnonation', and concurring with Valery Tishkov and Rogers Brubaker, I interpret nationalism as a variety of 'nation' oriented actions and discourses despite of whether they are related to a 'nation' or an 'ethnonation' (Tishkov 2000: 640). I employ the following definition of nationalism in this publication: "a series of postulates and actions formulated and initiated by activists within a particular social space on behalf of a 'nation' regardless of whether such entity is real or not." Nationalism, in other words, is a "discourse that constantly shapes our consciousness and the way we constitute the meaning of the world" (Ozkirimli 2000: 4).

Conceptually, we can make a distinction between 'cultural' and 'political' issues in dealing with nationalism. Questions about drawing of boundaries and the division of powers among political units I label as 'political' since they are related to the structure of the polity. On the other hand, people concerned with cultural issues are typically apprehensive about the nation-building policies of a given state, raising claims such as: exemptions from laws that penalize or burden cultural practices, assistance to do things the majority can do unassisted, external rules restricting non-members' liberty in order to protect member's culture, internal rules for member's conduct that are enforced by ostracism and excommunication, incorporation and enforcement of traditional or religious legal codes within the dominant legal system, special representation of groups or their members within government institutions, and symbolic recognition of the worth, status, or existence of various groups within the larger state community (Kymlicka and Norman 2000: 25). The debates here are related by in large to the public policies of a given state. Within this publication I will concentrate on the cultural aspects of nationalism. Demands in the sphere of culture hardly pose a threat to the integrity of the state, its borders and basic political arrangements.

We need to distinctly stress that this thesis does not deal with multiculturalism *per se*. Surely, multicultural and multiculturalism are terms with multiple meanings. As explicated by Homi K. Bhabha in, multiculturalism is a

portmanteau term for anything from minority discourse to postcolonial critique, from gay and lesbian studies to chicano/a fiction.....the multicultural has itself become a 'floating signifier' whose enigma lies less in itself than in the discursive uses of it to mark social processes where differentiation and condensation seem to happen almost synchronically (Bhabha 1998: 31).

Such ambiguity is precisely why we need to be careful with the usage of this term and clarify its meaning at this stage.

If we understand multiculturalism as series of postulates and actions focused on particular issues within the political framework of a given state related to its cultural sphere, then we can easily relate it to our discussion of the cultural aspects of nationalism. However, we must clearly state that not all discourses within multiculturalism are related to nations, or ethnonations, since for example, demands for various rights by homosexuals, women, or groups promoting 'alternative lifestyles' are not. Since these groups are concerned about culture, their claims also constitute what can be labelled as multiculturalism, but in this publication I am concerned only with issues raised by the members of national or ethnocultural minorities. This publication, in other words, is not concerned with multiculturalism as a political programme that advocates 'recognition' of all different segments in the society, gays, Native-Americans, women, national minorities and so on, but only of those demands made in the name of national minorities. However, all the questions raised by activists concerned with the well-being of minority groups of people within the state, share two important features:

they go beyond the familiar sets of common civil and political rights of individual citizenship which are protected in all liberal democracies; and they are adopted with the intention of recognizing and accommodating the distinctive identities and needs of ethnocultural groups (Kymlicka and Norman 2000: 2).

The challenges national minorities or ethnocultural groups pose to liberal theory are the primary topic of my concern in this publication.

As far as minority demands are in question, it seems important to clarify to some extent the meaning of the concept 'minority'. I will here use the terms 'minorities', 'national minorities' and 'ethnocultural minorities', and 'minority cultures', and 'national minority cultures' interchangeably, although they are not always synonymous as sometimes minorities are taken to be so in the light of their subordinated socio-economical position while not necessarily numerically inferior than the rest of the population. However, no matter if a national culture is a 'minority' in the numerical sense or not, the moral issues are often the same, whichever the term used. The term 'minority' appeared in international politics in the background of post- First World War settlements and the League of Nations. At the Peace Conference ending World War One, the term was applied to particular ethnic, religious or linguistic groups in the treaties signed with the newly established states which were formerly under the domination of the Austro-Hungarian and Ottoman empires.

Today, there is no generally accepted definition on what constitutes a minority. Even within international law, the term minority has no clear meaning. In

1979 Professor Francesco Capotorti proposed a definition of the term in the 'Study on the Rights of Persons Belonging to Ethnic, Religious, and Linguistic Minorities' prepared for the UN:

A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the state - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.

Moreover, the United Nations Commission of Human Rights in 1978 formed a working group to draft a declaration on the rights of members of minorities. In accordance with the request of the Commission of Human Rights to prepare a definition of minorities, a definition was presented by Jules Deschenes to the Sub-Commission in 1985:

A group of citizens of a State, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law (Thornberry 1991:7).

The Sub-Commission could not arrive at a consensus on the definition and forwarded it to the UN Human Rights Commission together with comments. The working group of the Commission came to the conclusion that the attempts at definition should be suspended and future work should concentrate on the text of the Declaration (Thornberry 1991:171). The working group was of the opinion that the adjectives 'national', 'ethnic', 'religious', and 'linguistic' notifying the term 'minority' provided adequate definitions so no further definitions were needed. Attempts at adopting a common definition were postponed indefinitely (Shaw 1992: 13). Although the definitions by Capotorti, Thornberry and Deschenes exclude non-citizens, migrant workers and refugees from the category of 'minority', this requirement is dubious not only from a moral point of view, but also in the light of the dangerous potential for states to manipulate their citizenship legislation so as to exclude certain population groups that would otherwise qualify. This requirement is problematic for the Roma and for many individuals caught in the middle when state borders change due to secessions, as it was the case in the disintegration of former Yugoslavia.

For the purposes of finding a workable definition of a minority then, the requirements for citizenship, or long lasting ties to the country, will not be considered as relevant. The definition will be based on a combination of objective and subjective criteria, which in any case recur in many of the standard definitions of minorities (cf. Henrard 2001). Among the objective elements, distinctness based on ethnic, cultural, religious, or linguistic origin is regarded as the determining criteria for constituting a minority. Secondly, for a given group to be considered as a minority it should be less numerous than the rest of the population of the state. Finally, an objective requirement is non-dominance, excluding dominant minority groups from the definition of minority. Obviously such dominant minorities "would not need minority rights, while dominated majorities need much more than minority rights, more specifically self-determination and the right to rule themselves" (Henrard 2001: 42).

As far as the subjective elements of the definition are concerned, one understandable requirement is that the members of the population groups concerned should have the wish to hold on to that separate identity. It is important to note that

the distinctness of the identity of the minority group should not be disputed by the state in cases when there are similar cultural characteristics between a majority and a minority group, since otherwise the right of the members of the minority culture for autonomy and freedom for association would be fettered. Otherwise, the state might flatly reject demands of national minorities on the grounds that the group in question is actually part of the majority and therefore its members do not require special treatment by the state. It is apparent that in cases when the cultures of the majority and the minority are fairly similar, like among some nations that use various Slavic or Latin based languages, the state can easily claim that the minority culture is factually just a regional version of the majority's. To avoid such manipulations, the choice to recognize a group as having a separate identity is left with the members of the presumed minority culture.

A common sense of identity and solidarity - that is a feeling of belonging to a particular group, as well as the intention of preserving that identity - makes up the subjective component of any definition of minorities. For a group to be counted as a minority, then, the requirement is that on one hand, it should have some distinctive characteristics from the rest of the population. In the case that the central authorities dispute the validity of the claim, we will consider the perception of the minority group itself. The second requirement is that the members of the minority group desire to preserve this distinctiveness. The following working definition of the concept minority is then accepted in this publication:

A minority in any given country is a population group which, perceives that it has ethnic, religious and linguistic characteristics different from the rest of the population, which, is non-dominant, numerically smaller than the rest of the population, and, has the wish to hold on to this separate identity.

This definition of minority will be applied throughout this publication in discussions that are abstract in nature, as well those which concentrate on concrete examples taken from around the world.

Demands made by multiculturalists address precisely the question of a just nation-building process, and in order to see if these demands are justifiable we need to closely analyse this process. Here it might be a good idea to define the term. Nation-building is a phenomenon of the modern liberal democratic state. The process is essentially taken to be as ubiquitous in the contemporary world (Anderson 1983, Gellner 1983, Kymlicka 1998). By and large, nation-building is understood as a process that diffuses a certain "code of understanding" among the citizens of a given country about the nature of the state they live in, its history, laws, and functions. Nation-building, then, refers to the use of the state apparatus and public resources, in pursuing a particular goal - building of a nation. Nation-building is concerned with public policies carried through public institutions. The state educates all citizens in the official language, the country's history, its insignia, state organs and legal system, and so on. A typical nation-building process principally rests on a unified educational system able to transfer similar if not identical, values to consecutive generations of citizenry. The process is characterized as 'nation-building' because generally, throughout the population of the country it creates an image of the people as being part of a unified body, a single nation. Consequently, a single language is spoken by the officials throughout the nation, a single set of legal holidays and insignia are accepted and celebrated throughout that country. The policies of 'nation-building' include establishing a unified national educational curricula, state support for national media, the adoption of national symbols and official language laws, citizenship and naturalization laws, and so on.

## **7. Liberal Neutrality and the ‘Problematic’ Aspects of the Nation-building Process**

Political theorists have had a lot to say about “the language of politics”- that is, the symbols, metaphors, and rhetorical devices of political discourse- but have had virtually nothing to say about “the politics of language”- that is, the decisions about which languages to use in political, legal, and educational forums (Kymlicka 1995: 111).

The starting point in our inquiry about the justness of the nation-building process is the neutrality of the liberal democratic state which has been in recent years the subject of much criticism from different and sometimes even antagonistic philosophical circles. Multicultural advocates have stressed that in the modern world the ostensibly neutral liberal democratic state, during the process of nation-building inherently and unavoidably chooses the language of the majority ethnic group. Put in other words, multiculturalists point out that existing liberal democracies are not “completely neutral with regard to societal structure, culture, ethos, ways of life” (Bader 1997: 784). Beyond the inauguration of an official language, within the nation-building process the state also typically promotes a specific culture, a way of life and history that is most likely to be that of the majority ethnic group, thereby indirectly neglecting the culture of various subgroups within the society. Advocates of multiculturalism comment that official holidays, flags, coat of arms, and so forth, are typically made by the choices of the majority ethnic group. In essence, the modern state “operates through an officially recognized and supported public culture, consisting of a recognized national language, a history, a range of cultural traditions, publicly accepted rituals and so on” (Poole 1998: 124). This situation bothers supporters of multiculturalism, who favour special provisions for various ethnic, religious or gender minority groups. For the proponents of multiculturalism, these provisions are just in the light of the unfair nation-building process.

## **8. Two Arguments in Favour of a Liberal Nation-building- Kymlicka’s Theory Reassessed**

In this section, my intention is to consider how the defence of minority rights has been constructed and defended by multiculturalist advocates. In particular, I will pass judgment on the sophisticated point of view put forward by Will Kymlicka, the most important political theorist discussing minority issues in the last decade or so. Kymlicka’s contribution to the debate about the possibilities for support of national cultures has been enormous. In his numerous writings, Kymlicka has focused the attention of many political theorists on the issues of multiculturalism, minority rights and nation-building. Kymlicka’s writings have largely contributed to the debate over whether and how minority rights can be defended in a liberal state. In this essay I will first present the main line of thought of Kymlicka’s defence of the rights of national minorities for support of their culture, then criticize its shortcomings. Finally, I will

reassess Kymlicka's theory so as to provide firmer grounds for the liberal support of minority cultures.

Throughout his multicultural opus, Kymlicka, has appealed for liberal minority rights based on the worth of 'culture as a context of choice' for autonomous decisions. His argument rests upon what might be labelled as 'autonomy/freedom - culture connection' having three central assumptions: a) that secure cultural membership is an important good; b) that the good of secure cultural membership is something which is enjoyed to a greater and lesser degrees by members of different cultures in the country; c) the disadvantages associated with insecure cultural membership require and justify intervention to support struggling minority cultures. (Patten 1999) In brief, Kymlicka argues that secure cultural membership is important condition of freedom, the lack of which is a serious disadvantage. Freedom, for Kymlicka the capacity to form and revise a conception of the good life, requires a context of choice for devising one's plans for living a meaningful life. Culture is the 'provider' of this context. Thus, in *Multicultural Citizenship*, Kymlicka (1995: 83), writes, "freedom involves making choices amongst various options, and our societal culture not only provides these options, but also makes them meaningful to us." This means that: "[f]or meaningful individual choice to be possible, individuals need...access to a societal culture" (Kymlicka 1995: 84).

Liberalism, according to Kymlicka, must secure freedom and individual autonomy, and given that these require culture, liberalism itself needs culture. It is worth pointing out here that Kymlicka distinguishes between the cultures of immigrants from the cultures of national groups. Kymlicka is concerned with a particular kind of culture, which he labels as a 'societal culture', one "whose practices and institutions cover the full range of human activities, encompassing both public and private life" (Kymlicka 1995:75). Societal culture for Kymlicka is synonymous with 'a nation' or a 'people'- that is, "an intergenerational community, more or less institutionally complete, occupying a given territory or home land, sharing a distinct language and history" (Kymlicka 1995: 18). A societal culture is a "culture which provides its members with meaningful ways of life across the full range of human activities, including social educational, religious, recreational, and economic life, encompassing both public and private spheres" (Kymlicka 1995: 76).

Since members of minority cultures have great difficulties in securing their societal culture, the condition for their freedom, and their predicament is a question of circumstances rather than choices, then there is a justification for state intervention for minority cultures. There are then, two parts of Kymlicka's argument;

the fact that individual freedom is at stake shows why insecurity of cultural membership is so disadvantageous, and the fact that the insecurity of cultural membership is part of one's unchosen circumstances shows why this is a disadvantage which calls for liberal egalitarian intervention (Patten 1999: 391).

What is the problem with this defence of cultural rights for national minorities? I see the main problem of this argument in Kymlicka's definition of societal culture and its relationship to freedom. For Kymlicka, on the one hand, freedom and autonomy amount to the capacity to form and revise a person's conception of the good, since the free individual should be left to formulate, scrutinize, and revise his/her own plan of life, because no other procedure is morally superior (Kymlicka 1995: 80-82). On the other hand, he understands societal culture as a provider of meaningful ways of live across the full range of human activities. It includes both the public and public sphere and social educational, religious,

recreational and economical activities. He argues that people should be able to make autonomous choices and that these choices can only be provided through a specific cultural context: that of their societal culture. Freedom “involves making choices among various options, and our societal culture not only provides these options, but also makes them meaningful” (Kymlicka 1995: 83). The problem with this definition is that culture is taken to embrace the totality of human life within a society and connected to the ability to make meaningful choices in life.

Consider an extreme case: if an individual has no choice of activities in life, or he/she can not comprehend the ones of the society he/she lives in, then he/she would not be able to choose to do anything in life and would consequently be ‘unfree’. This kind of person would surely qualify for state assistance. However this kind of person is almost impossible to imagine. Any person would be able to comprehend at least some of the activities happening around him/her and choose among them. His/her set of options would be more or less limited compared to another citizen in a given polity, but nevertheless he/she would be in a position to exercise his capacity to form a conception of the good life. Kymlicka’s societal culture is the aggregation of all the human activities one nation has. More available societal activities mean bigger set of choices for autonomous life. However, to say that the loss of the societal culture/nation equals loss of freedom is highly improbable. As I have mentioned, it is inconceivable that a culture will disappear and that its members will not be able to at least submerge into another one. A member of a minority nation does not simply lose all the range of activities in life when his/her culture is being assimilated into a larger one. What happens in that case is that his/her culture is being substituted by another one. In the same time his/her freedom to make meaningful choices in life remains even if this individual might not have the understanding of all the practices and customs of the bigger group, and in this sense might not have the same variety of options as his/her old culture provided.

Kymlicka’s claim becomes less apparent if we comprehend that an individual can scarcely have lost of his/her freedom if a particular cultural practice has been discontinued or has altered its content and meaning. If a dance, theatre or a custom of a given nation has been lost for some reasons, there is a loss connected to it. However, this lost cultural practice can hardly be equated with the freedom for the individuals belonging to this community. Thus, to say that present day Estonians lose their freedom if a traditional dance has been lost in the process of modernity, because the Estonians have decided not to practice it anymore, would be farfetched. Similarly we can hardly say that parents in a mixed Russian- Estonian marriage who decide that their child should be raised in Estonian rather than Russian are depriving this child of his/her freedom. If there were no Russian language theatre in Estonia, would Russian Estonians not still be able to exercise freedom?

There are different cultural traits that are more or less important for a person’s capacity to form and revise a concept of the good life. For example, there is a great difference if an individual is, for given reasons, disallowed from using his/her native tongue, and if he/she is prohibited by the state to engage in a particular dance. The Macedonians in Greece are in a case of the point for the former, and the Catalans during Franco’s regime for the later. Banning people to speak their mother tongue in public or in private affects their ability to freely choose a concept of good life more then the ban on a traditional dance. There is a degree by which our freedom is affected if cultural traits are discontinued or disallowed. The point is that Kymlicka’s link between autonomy/freedom and societal culture is far too ambiguous as it stands.

Kymlicka's reasoning does not make it clear in which sense a loss of culture means a loss in a person's freedom. In the example given by Patten, members of a 'smaller' culture gradually assimilate into a 'bigger culture' (Patten 1999: 393). This however, does not assume that these particular individuals lose their culture, their beliefs about meaning and values. Consequently, they do not lose their freedom instead they transform their culture by assimilating to another one. Also, consider the cases of a person who is bilingual or bicultural. Although if such a person, for various reasons, loses one of his/her own languages or cultures, there would be a loss, but the point is that "if something is lost, it is not, properly speaking a loss of autonomy" (Lipkin 1997: 32). Furthermore, whether individuals belonging to minority cultures willingly accept the decay of some of their cultural practices is also an important question. Under such circumstances would Kymlicka recommend state support for upholding these customs? Finally, as has nicely been pointed out, a loss of a traditional culture might actually increase individual autonomy (Lipkin 1997: 16-17). For example, women living in fundamentalist Islamic regimes or strict Catholic countries would have a greater freedom if they were to 'lose' their culture. To take a more recent example, can anyone claim that women living under the Taliban regime in Afghanistan enjoyed a specific culture, and that the fall of the fundamentalist regime denied them freedom? One should also take into account that although an individual typically moves around his/her own national culture, he/she might also appreciate, adopt, or develop different cultural practices of other (ethno)nations instead of the ones of his own nation. Thus, Jeremy Waldron argues that "meaningful options may come to us as items or fragments from a variety of cultural sources" (Waldron 1992: 25, 783). How is then the freedom for a person assimilating a new culture in peril? Why could not she/he be able to make meaningful choices in life?

Furthermore, Kymlicka's claim that cultures are justifiably important because they are necessary to freedom and autonomy of individuals seems inconsistent with developments around the world. Minorities around the world, seek cultural rights because culture or some aspect of it, has a meaning for them that they deeply cherish. Thus, members of minorities of a third generation might feel completely free in their adoptive country and yet want to reawaken a certain cultural trait or custom. In the Balkans, Albanians in Macedonia, Macedonians in Bulgaria, Bulgarians in Serbia and Serbs in Albania all demand various cultural rights because they ascribe a particular meaning to them, these people develop or preserve something important in their lives through culture whether autonomy is enhanced or not. To be fair, Kymlicka is aware that culture consists of various elements, for example "national cuisines, distinctive architectural styles, a common language, distinctive literary and artistic traditions, national music, customs, dress, ceremonies and holidays, and so on." (Kymlicka 1995: 76). However, he needs to take into account this fact in the discussion about the worth of the "context of choice" for individual's freedom.

To recapitulate, Kymlicka relates a societal culture, "a shared vocabulary of tradition and convention which underlies a full range of social practices and institutions", to individual's membership in a given culture and the ability to exercise his/her freedom. However, the relationship between culture and individual identity and the exercise of freedom is not so straightforward as Kymlicka claims. We cannot pose a direct link between (societal) culture and individual freedom without looking at particular aspects or traits of the culture and their relevance to individual wellbeing. In general, Kymlicka needs to clarify which aspects of one's cultural belonging are required for a person to have freedom and autonomy, which elements of culture are

more or less important to freedom or autonomy, and finally how these later concepts relate to a loss of some aspects of a person's culture.

Kymlicka's argument that the loss of one's own culture as a provider of meaningful choices is a loss of the person's freedom or autonomy does seem to miss the mark, and needs to be additionally explicated and clarified. In which way can we then construct a defence of cultural rights for minority nations? I believe that Kymlicka's understanding of culture as providing meaning to life of individuals is a good starting point for making a claim in favour of cultural rights. Indeed, his definition does not differ much from other social scientists' explanations of culture. Let us first focus for a moment on the concept of culture in more depth, and then go on to make a case for minority rights.

Anthropologists warn that culture must not be treated as a "self-contained 'super organise' entity with forces and purposes of its own" (Geertz 1973: 11). Culture in other words, is not a boundless monolithic entity; rather, it is a matrix of different practices and actions that bestow meaning to the social reality. Clifford Geertz, for example, takes the concept of culture to represent those "webs of significance a man has spun around himself", and to consist of "whatever it is one has to know or believe in order to operate in a manner acceptable to its members" (Geertz 1973: 4, 11). Such a matrix or web of significance is valuable to individuals because it provides them with sense of orientation in life; it is a set of control mechanisms "plans, recipes, rules, instructions (what computer engineers call 'programs') for the governing of behaviour" (Geertz 1973: 44). As Renato Rosaldo succinctly explains, "[culture] refers broadly to the forms through which people make sense of their lives" (Rosaldo 1993: 26). Culture in other words is:

the universe of meaning and the key for comprehending and orientation in any real given world, which once made, every new generation confronts and adapts to...Identity of the individual and of the group is based on the culture understood as...the whole of knowledge and meaning which are not subject of no specific education, but which, every member of a given community adopts (Stojkovicj 2002: 44-45).

Consider also Irving Halowell's remark that "as a result of self-objective understanding human societies become societal systems of conscious persons, unlike the societies of the other primates" and that "when we observe cultures from a point of view of human particularity we could say that they are *elaborated systems of meaning* [emphasis added]..." (Halowell 2000 [1967]: 215). Culture, in this view, can be described as a structure which comprises a unique set of linguistic, religious, historical and societal norms and practices that bestow meaning to the lives of the members of the community. For Geertz, "cultural patterns...give meaning, that is, objective conceptual form, to social and psychological reality"; and also, "culture is the fabric of meaning in terms of which human beings interpret their experiences and guide their action" (Geertz, 1973:93, 145).

Alternatively put, cultures consist of various intersubjectively shared symbols that actors invest with meaning and deploy in ritual, tradition and other modes of action. A symbol is "any object, act, event, quality, or relation which serves as a vehicle for a conception—the conception being the symbol's meaning" (Geertz 1973: 91). Symbols are by definition "multivocal,' and hence ambiguous, not simply in the sense that they can and do embody multiple meanings, but in the further sense that different actors can invest the same symbol with divergent, indeed conflicting messages" (Johnson 2000: 410). Sometimes national minorities are in no position to revive their traditions and customs (symbols) as they were practised in

the past. Still they may prefer to reinterpret these practices and give them new meanings than give up on cultural traits that mark their difference and specificity.

So Kymlicka posits that culture provides its members with meaningful ways of life across the full range of human activities. As we saw, other social scientists generally agree with this view. However, Kymlicka jumps into making a connection between culture and freedom as a necessary item for defending minority rights even though, as we saw, this link is underdeveloped and ambiguous. Instead, I think that to argue for minority rights we should stay within the domain of culture. Cultures consist of various shared symbols that actors invest with meaning. These symbols, particularly the acquisition of the native language, are very important equipment for members of minorities, because they give meaning and order to life, or help them find it. As Branimir Stojkovikj argues, “for the individual the language is not only instrument of his interaction with others, but also a necessity for forming his own subjective experience” (Stojkovikj, 2000: 46). More precisely, “a child does not experience the language as some quasi-ideal system of symbols, but as the speech of his parents connected to their facial expressions, body movement, and bound to their typical behaviours.” (Stojkovikj, 2000: 46)

Hence, “language is not like other cultural beliefs and commitments. For many it is the only means through which members can have access to their histories and through which many of the cultural rituals can be performed. The disappearance of a language most likely will lead to the disappearance of a substantial part of the cultural life of the group. Language is not just another cultural fragment that can be used with cultural fragments from other sources to understand the choices and options available to people. It is the primary means.... In many parts of the world where language minorities are battling majorities for retention (and even for official recognition) of their language, the issue is often viewed as a symbol of the extent to which the majority respects the cultural minority. No amount of emphasis that we are all cosmopolitan will persuade members of those minorities from invoking the protection of their language as one form of resistance against domination by the majority.” (Addis 2001: 759, cf. also Patten 2001)

People always use cultural symbols with the same end in view: “to put a construction upon events through which he lives, to orient himself within ‘the ongoing course of experienced things’” (Geertz 1973: 45). The importance of various cultural traits is more universal - not only minorities but also members of majorities deeply cherish them, and seek them flourishing. For majorities, however, the acquisition of cultural features is usually taken for granted, and only in situations of crisis do they rediscover how important their culture is for them.

In the era of modernity, almost all citizens develop national identity; all are members to a given culture regardless of whether they are majorities or minorities. To be a member of a culture is a complex phenomenon. A person’s membership in a culture is related to the cultural matrix so that an individual develops aspects of the structure through his/her own experience. Some aspects of the structure are typically internalized generally by all members of one culture, but the acceptance of other elements will be particular to the individual. The language of culture A will be typically adopted by almost all persons who develop national identity synonymous with that culture. People who develop French identity will in general learn the French language, although this is not necessarily and always the case. On the other hand, how many people with French identity learn the words of the Marseillaise will vary from generation to generation. What is important is that national identity is developed

individually via a process of accepting of some aspects of the structure. For some, the number of relevant elements in the matrix necessary for the development of a national identity will be low, while for others it will be quite high. Some will necessarily combine elements of their structure with aspects of other people's structures, and this combination will again be contingent on individual choices. In this sense, we can not say that a French person who once knew the words of the Marseillaise but then forgot them is less French because of that. To be French, and to be accepted as such, one needs to embrace a number of essential cultural traits. For different nations, these symbolic markers will be different. For some nations, the markers will change as time passes. It is one thing to be French now, but something completely different a hundred years ago.

Thus, membership in a given culture means internalizing specific traits and practices of that community.

Becoming human is "becoming individual, and we become individual under the guidance of cultural patterns, historically created systems of meaning in terms of which we give form, order, point and direction to our lives. And the cultural patterns involved are not general but specific- not just "marriage" but a particular set of notions about what men and women are like, how spouses should treat one another, or who should properly marry whom; not just "religion" but belief in the wheel of karma, the observance of a month of fasting, or the practice of cattle sacrifice" (Geertz 1973: 52).

The codes of behaviour are different in different countries, thus the difficulties of 'accommodation' to the way of life of the host nation vary when one moves and lives abroad. What is acceptable at the dining table or in a bar in Macedonia might be completely different in Japan. Typical Macedonian behaviour when two acquaintances meet after a long separation is to chit-chat, exchange phone numbers and promise to call each other 'soon', although neither of them will actually do this. The promise to call someone in other countries might be taken more seriously. A Macedonian wedding ceremony has a specific set of customs and behaviours unlike English customs and behaviour. A marriage of an Englishman in Macedonia, or a Macedonian woman in England would thus cause uneasiness for wedding guests travelling from/to England and Macedonia because they would not be familiar with the set of rules and cultural patterns of the host country.

What is important for our discussion is that cultural membership, the development of a national identity and having an access to institutions of one's culture are important because they are of a great value to the individuals embracing them. Taken together, various cultural traits and symbols make sense of the lives of different individuals. Beyond this, the value individuals get from various cultural traits is diverse, but I believe can be subsumed under one of the following three categories:

1. a person adopts a cultural trait that is helpful for his/her pursuit of well-being in life, e.g. learning the native language
2. a person embraces a cultural symbol because it makes him/her content or happy with it, as for example when a person is content or feels good when learning a difficult folk dance or song
3. an individual believes that being emerged in his/her national culture is what the good life is about, as in the case when someone is preoccupied in reviving or reawakening the traditions of a given culture as did the more educated nationalist leaders during the nineteenth century.

A combination of these categories is also possible as in the case of an individual holding on to a cultural practice that makes him content and is part of what he/she thinks life is all about.

Take the example of a second generation Macedonian emigrant living in Toronto. The value this Macedonian gets from various cultural traits that constitute his/her national identity might be instrumental in the sense that with them he/she can achieve his/her ends in life. In that sense, secure cultural membership, together with the other primary goods, will be a mean for realizing the various ends that we have whichever life plans we hold on to. A cultural trait such as the ability to speak in one's native language would be a mean for us to understand the world around us and find a way of life that suits us best. For this Macedonian learning his/her native tongue may be useful for his/her progress in life and adopting a conception of wellbeing.

Alternatively, this individual might highly value cultural traits for reasons independent of whether or not they help him/her realize his/her highest order interests in life. For example, he/she might highly value the opportunity to learn his/her native tongue, although strictly speaking it will not be useful for his/her devising of a conception of a good life because he/she has adopted the majority language in the country as his/her main idiom and comprehends the world through its linguistic rules. Indeed many emigrant minorities seek state assistance in preserving particular cultural traits that they deeply cherish even if they are fully integrated in the 'host community.' On the other hand, adopting other cultural traits such as learning to cook a traditional 'national' food, might provide individuals with a high degree of satisfaction and delight.

Still, on the other hand, since cultural traits are part of our identity and what we are or what we become, they could very well constitute our understanding of the good in life. Although it is rarely the case, for some individuals, upholding the way of life and identity of their ancestors is the chosen concept of wellbeing in life. This Macedonian might feel so nostalgic for his/her original way of life that he/she devote all his/her energies and resources reconstructing it in the country to which he/she has emigrated. He/she would spend all his/her free time organizing cultural events for the Macedonian community in Canada, picnics, theatre performances, poetry readings and so on. For this person then, to be(come) Macedonian would be the good in life.

Altogether, it is important to understand that there are a number of cultural traits that individuals across the board will need to develop or preserve without which they would face severe disadvantages in life. It is fair to assume there are specific cultural traits, like the maintenance of one's native language, that would be of interest to all individuals in modern society regardless of their cultural/ethnic background. As a matter of a biological need all persons must grow up and live in some culture. A culture is a

"way of awakening our faculties. Any culture does this to some extent. People proficient in one culture usually make sense of another. There is no prison. We can always walk on if we want to enough. What we can not do is something which is no loss— namely be nobody and nowhere. I do not mean that some people may not be very unlucky in their culture, either because it is generally bad, or because it suits them badly. But this is still nothing to the misfortune of having no culture at all." (Barry 1983: 291)

Studies in social psychology suggest that membership in particular cultures is so deeply rooted in human nature that it would be impossible to eradicate. This is

so because the phenomenon of group-formation answers our basic human needs (Tamir 1998). It follows that everyone has an interest in preserving features necessary for preserving his/her own culture. Without a cultural membership, we would have little chance to realize our life plans, and that is why it is important to us that cultural traits are treated as a sort of primary good. Indeed, as argued, undirected by culture patterns - "organized systems of significant symbols - man's behaviour would be virtually ungovernable, a mere chaos of pointless acts and exploding emotions, his experience virtually shapeless" (Geertz 1973: 46).

In fact, the lack of possibilities to preserve and pass on cultural traits might be harmful for new generations. Kymlicka himself notes how James Nickel's study emphasizes that there is a danger of harming intergenerational bonds if parents are unable to pass on their culture to their children and grandchildren (Kymlicka 1995: 90). Moreover, as argued by Frances Svensson

Human beings very reluctantly give up their [cultural associations], even in the face of negative costs of membership (such as discrimination). This is because the group functions as a mechanism for mobilizing the individual to act in general social situations, helps to define needs and desires and the ways to achieve them, and forms the locus of strong affective attachments which figure prominently in self-identity. It also has much to do with pride and self-respect of individual members (Kymlicka 1989a: 176).

Culture and its traits are the essential link for human self-perception and orientation in life and in the context of the modern societies our cultural membership/national identity will be a non-negligible part of our lives. People want to preserve their cultural symbols and are even ready to struggle for their preservation. So, even if we are not consciously aware of our membership in a culture, its importance for us will be felt when it is threatened or thought to be threatened. (cf. Nielsen: 1999)

If this is so, we have a case for state assistance protecting the cultural symbols of all citizens. Given that as a rule individuals feel most comfortable with the culture they grow up in, the typical need will be the preservation of a number of cultural traits of one's own community or nation. It is worth pointing out that demands of members of minority groups for perpetuation of their cultural traits carry no less weight than the demands of the majority population. Just as

members of the cultural majority in liberal societies need recognition of the social forms that are essential to their self-understanding, members of minority cultures need recognition of the social forms that underpin their feelings of self-confidence, self-respect, and self-esteem (van den Brink 2000: 191).

Inspired by Kymlicka's discussion about the worth of culture, we have outlined the first argument in favour of liberal nation-building, namely the paramount importance that culture, and its various traits plays in the lives of all individuals. We have explained that Kymlicka's postulate relating individual freedom to a societal culture and a development of a national identity is ambiguous. Furthermore, we have elucidated why cultural traits are important to individuals. We have stressed that culture, a system of meaning in whose terms we give form, order, point and direction to our lives, and its various traits, has special and often essential significance for leading a good life, both for individuals from minority nations and for persons belonging to the majority population. Alternatively put, culture here is "the structures of meaning through which men give shape to their experience; and politics is...one

of the principal arenas in which such structures publicly unfold” (Geertz 1973: 312). In the political realm, cultural membership and national identity are to be seen as a ‘primary goods’ in the Rawlsian understanding of the concept. In such a case, support for the cultural practices and traits of all citizens, including members of the national minorities, is required by a liberal egalitarian state. However any state support for culture the of members of minorities will be dependent on the kind of practices and cultural traits considered worthy of attention. If any given individual pleads state assistance for preserving an aspect of his/her culture that is contrary to the ideals of liberal theory, then such support must not be granted.

We are left with the conclusion that the liberal state should go beyond the provision that all cultural groups are left equally free to use their energies and resources in pursuit of cultural traits: the state should assist cultural practices of minorities. But, what do we mean when we say that the liberal egalitarian state is obliged to support cultural practices? What does liberal egalitarianism say about the scope of this assistance? Do we mean that every citizen is entitled, as a matter of justice, to equally secure cultural identity? At this point we need to determine exactly what does this premise implies for the public policies of the liberal egalitarian state.

To do so, let us closely look into Kymlicka’s line of reasoning in favour of minority rights in relation to his claim that minority rights can be defended as a response to unequal circumstances. Although I believe that this is the right path to follow, Kymlicka falls short. Before explaining this conclusion, let us closely observe Kymlicka’s argumentation. In *Liberalism, Community and Culture*, he develops a detailed account of how the circumstances of some national minorities in Canada are different from those of African-Americans in the US. Unlike the African-Americans, aboriginal communities in Canada do not ask for better prospects for integration in the larger community, but for the right to be left alone from it. Assimilation in the larger community for aboriginal individuals is as much as a badge of inferiority and negative self-image as the segregation of public facilities was for blacks in the US. Kymlicka describes how in the reservations of North Canada, a land rich of resources, a provision that allowed the unrestricted migration of white workers could lead to a situation where they would become a majority and decide to use public money to “provide amenities for themselves-movie theatres, dish antennas for television reception, even a Las Vegas-styled resort (Kymlicka 1989a: 146). Transient residents could also use their voting power to demand that public services and education “be provided in their own language, at the expense of the provision of services and education in aboriginal languages” (Kymlicka 1989a: 146). Aboriginal leaders have sought to ensure that new residents in the community do not receive education and public services in English, because this would weaken the long-term viability of the community. Not only will new residents not “have to fully integrate into the minority culture, the establishment of an Anglophone infrastructure will attract new Anglophone arrivals who may have no interest in even partial integration into the aboriginal community” (Kymlicka 1989a: 150). Similarly, a provision that makes the aboriginal land non-alienable might be required to protect aboriginal communities from white settlement and development. Kymlicka explains how the system of Canadian Indians through which the land is the public property of the tribe, resembles systems of cooperatively-managed apartment buildings, whereby those who want to leave the land are to get a per capita share of the land’s funds. He argues that if the land was divided among the members of the community, then there would be a danger of individuals selling the land either because “Indians were [are] financially deprived (and hence in need of money to meet the basic needs of the family)” or, “because they were [are] culturally ill- equipped to understand the

consequences of having (or selling) title to land” (Kymlicka 1989a: 147-148). Kymlicka argues that the effect of this kind of policy would be to sacrifice an individual community in order to protect the mobility rights of individual non-Indians. Additionally, to protect the land from overcrowding there are restrictions on the marriage and voting rights of both Indians and non-Indians, some “allow non-Indian spouses to vote but not to hold office, others allow non-member spouses and children to remain after the death of the Indian spouse but not to vote, and so on” (Kymlicka 1989a: 149).

Therefore, for Kymlicka, “the viability of Indian communities depends on coercively restricting the mobility, residence, and political rights of both Indians and non-Indians. It is this which raises the need for minority rights that are decried by many liberals, rights that go beyond the non-discrimination and affirmative action” (Kymlicka 1989a: 146). Kymlicka is ready to defend the rights of aboriginal communities to retain their way of life vis-à-vis intrusions by members of the larger Canadian community even if the measures conflict with the universally based rights of citizens of this country. He explicates:

To give every Canadian equal citizenship rights without regard to race or ethnicity, given the vulnerability of aboriginal communities to the decisions of the non-aboriginal majority, does not seem to treat Indians and Inuit with equal respect. For it ignores a potentially devastating problem faced by aboriginal people, but not by English-Canadians- the loss of cultural membership (Kymlicka 1989a: 151)

Kymlicka understands that there might be a conflict between respecting a cultural membership and the rights to equal citizenship. One can readily understand the feeling of discrimination, says he, “that occurs when an Indian woman is told she can not get a publicly funded education in English for her child (or when a white man is told he can not vote in the community he resides and contributes to)” but then goes to say that “in culturally plural societies, differentiated citizenship rights may be needed to protect a cultural community from unwanted disintegration”, and also that “the special status of aboriginal people can be viewed as an acceptable, if imperfect, resolution of this conflict” (Kymlicka 1989a: 151-152). Alternatively put, “if liberal equality requires equal citizenship rights and equal access to a common ‘field of opportunity’, then some minority cultures are endangered and this ...does not respond to our intuitions about the importance of our cultural membership” (Kymlicka 1989a: 152).

So on the one hand, Kymlicka claims that individual’s autonomy is a product of the ‘context of choice’, i.e. his/her own culture, and that it would be a mistake “to reduce cultural membership to the status of preference or life-style, since culture is the context in which different preferences and lifestyles are made available” (Patten 1999: 395). On the other hand, Kymlicka aims to differentiate between the circumstances in which members of minority cultures find themselves in, from the situation in which a citizen with an expensive taste of champagne is found. Unlike the dominant cultures in Canada, “the very existence of aboriginal cultural communities is vulnerable to the decisions of the non-aboriginal majority around them” (Kymlicka 1989a: 187) Critical for Kymlicka is the premise that aboriginals “could be outbid or outvoted on resources critical to the survival of their communities, a possibility that members of the majority cultures simply do not face” (Kymlicka 1989a: 187). Since he points out that access to culture is a precondition of self-respect, of the feeling that one’s ends are worth pursuing, it should be treated as a primary good in the Rawlsian sense. He writes: “in developing a theory of justice, we

should treat access to one's culture as something that people can be expected to want, whatever their more particular conception of the good" (Kymlicka 1995: 86). Also in *Liberalism, Community and Culture*, while discussing Rawls' concept of self-respect Kymlicka writes: "Rawls's own argument for the importance of liberty as a primary good is also an argument for the importance of cultural membership as a primary good." (Kymlicka 1989a: 166) Therefore, Kymlicka emphasizes the need to rectify the unchosen circumstances in which members of minority cultures find themselves by granting them special rights, so as to protect their right to the primary good of cultural membership. Inequality in the quest for cultural membership, in which members of the aboriginal communities are situated, has 'nothing to do with the choices of aboriginal people.' According to Kymlicka, it is the rectification of this inequality which is to be the basis for a 'liberal defence of aboriginal and of minority rights in general.' Once we recognize cultural membership "as an important primary good which underlines our choices, then special political rights and status for minority cultures may be required" (Kymlicka 1989a: 199).

These rights:

may impose restriction on the members of the larger society, by making it more costly for them to move into the territory of the minority (e.g. longer residency requirements, fewer government services in their language), or by giving minority members priority in the use of certain land and resources (e.g. indigenous hunting and fishing rights.) But the sacrifice required of non-members by the existence of these rights is far less than the sacrifice members would face in the absence of such rights (Kymlicka 1995: 109).

Kymlicka takes as an example a two-year Inuit girl. He states that "without special political protection like the restrictions on the rights of transient workers, by the time she is eighteen the existence of the cultural community in which she grew up is likely to be undermined by the decisions of people outside the community" (Kymlicka 1989a: 189). The point is that the protections members of minority cultures enjoy against other citizens "ensure that members of the minority have the same opportunity to live and work in their own culture as members of the majority" (Kymlicka 1995: 109). Finally, it should be noted that Kymlicka is careful not to allow breaches of individual freedom within the aboriginal communities or other national minorities. He underlines the necessity of protecting the individual's ability to rationally reflect on and revise his/her conception of the good life, since these are the liberal preconditions for living a good life: "liberals can and should endorse certain external protections where they promote fairness between groups, but should reject internal restrictions which limit the right of group members to question and revise traditional authorities and practices" (Kymlicka 1995: 37; see also, 81-2). However, according to Kymlicka, beyond this there is no reason to suppose that standard liberal prescriptions always take precedence over the special rights justified by his equality argument. (Kymlicka 1989a: 153, Kymlicka 1995: 196)

The problem with this approach, which situates minority rights within the egalitarian context of 'unchosen circumstances,' is not the principle undertaking of this project, but the specific instruments that Kymlicka foresees for its realization: namely, Kymlicka envisions illiberal and non-egalitarian procedures vis-à-vis members of the majority cultures as well as restrictions on the rights of the individuals from the native community to protect a way of life of this specific minority. In his writings, Kymlicka proposes measures that would restrict the freedoms of the members of the Canadian majority in order to preserve the life of the Canadian aboriginals. It is however, not clear, how my children's learning English in schools

would affect the life choices of the children of the aborigines who are being instructed in their own language. It is not true, as Kymlicka believes, that education provided for Canadian Anglophones in their own language, will come at the expense of services and education in aboriginal languages. To be treated equally, a Canadian English speaker has the same right, when the circumstances allow, i.e., when there is enough interest from parents, to have a school with classes in English as a member of the aboriginal community. If the *lingua franca* in the region is the language of the native population then children of Canadians who speak English would need to have this idiom also taught in school. But to say that just by providing facilities to 'Anglo-Canadians' including public education, one is not treating the members of the native community equally is tenuous. As far as I understand liberal theory, its aims are to let people freely pursue their life projects. Now, aborigines are to fall in this category as much as any other citizens in a given country. If the protection of cultural membership of the aboriginal population is against the principles of treating all citizens as equals, then we can not possibly support it and still claim liberal minority rights for the native population as Kymlicka does.

On the other hand, there is a potential problem with individuals and practices that go against the liberal premises of equality. True, the arrangements within the Canadian Indian community are internal affair of its members, they decide the philosophy upon which their community is to be operated. However, in cases where certain individuals correctly object that the aboriginal policies are against the principles of equal respect of all citizens and the practices are indeed found to be illiberal, the liberal state has a duty to intervene. Otherwise, it is not the state's business to evaluate the way of life of these people. The principles of cooperation among the Canadian Indians, as freely devised among themselves, are relevant on the land they own. How the community will use the land it owns is of no concern of the liberal state. Liberal theory respects the right to private property even when commonly owned, as is the cases with some Indian communities.

If however the land which aborigines use for their purposes is not their own but public, then to restrict other citizens from using it via procedures such as Kymlicka suggests would be to treat them unequally, even if the policies are developed in order to protect a specific way of life, i.e. that of the aborigines. One could imagine a situation where a creek is a sole provider of water to a valley where a native population with a traditional life based on fishing and hunting exists together with a number of 'Anglo-Canadians' who organize their lives around a more modern type of economy. The native population uses part of the creek water supply to water certain flora from which they make products used for important tribe rituals. If there was a severe draught and the water supply was limited then the question would arise whether the creek water should be used solely or mainly for drinking purposes or for continuous watering the special plants important for shamanic rituals. To insist that we need to provide the aborigines the constant, pre-draught flow of water to their flower fields in order to preserve their way of life, even if the rest of the population in the valley dies of thirst, would be not only preposterous, but also 'unegalitarian', for it would mean that the public resources would be divided so as to prefer the life choices of the native Canadians. Drinking water as a necessity for sustenance of human life overrides the needs for flowering plants important for specific aboriginal cultural activities.

As long as the Canadian native population lives in a liberal state together with other citizens, it has to respect the common laws and regulations. Within a liberal state it is not permissible that any are rules which restrict the rights of particular groups of citizens, even if such constraints are beneficial for the survival of

another group's way of life. Even if the Canadian native population were a self-governing unit within a federal state, this sub-state would have to operate under the constraints of the liberal order if we were to characterize it as liberal. If this federal unit were to impose certain rules and regulations that would be beneficial for preserving the aboriginal culture but opposed liberal norms, liberals would have to insist that this problem be solved by changing the norms. For example, if "a native Canadian woman appealed to the courts of the Canadian state against gender discrimination by her tribal government, there would be a straight fight between the liberal state and an illiberal sub-state group" (Freeman 2002: 212). Under such circumstances, the proper liberal approach would be to enforce liberal principles and protect this woman, otherwise this sub-state unit would be ruled illiberally. If the Canadian aborigines were granted a federal status, the implementation of some of the norms proposed by Kymlicka could fit the liberal framework, although most would remain illiberal. For example, the length of residence as a condition for getting voting rights could be different in this federal unit than the rest of Canada, although it could not be made excessively longer than universal standards for such laws, without becoming an illiberal measure aimed at harming particular individual interests. The point is that Canadian aborigine's self-government, as a federal unit within Canada, would still be subject to the customary liberal constraints. Under these circumstances, there would be some more flexibility in adopting laws and regulations that would benefit the interests of Canadian natives in preserving their culture, with the provision that these legal norms can not violate liberal postulates if Canada as a whole is to remain a liberal state.

To continue the discussion to the full extent we should consider the question of a independent state of the Canadian aborigines. Now there might be good reasons to allow a certain population to govern itself by founding a new country, (such as the popular will of the people of a certain region.) These reasons do not ensure, however, that this new country would uphold a liberal regime. If the Canadian native population was an independent country, or part of con-federal arrangements, then the laws and the regulations on its land might protect the interest of the aborigines at the expense of the Anglophones (or at the expense of women), but questions concerning the liberal credentials of such a state would arise. As long we assume that Canada is to respect liberal order, then there would be occasions where the use of public facilities and land would not necessary coincide with the way of life or customs of the aborigines. Kymlicka proposed that the non-availability of options corresponding to beliefs about value of members of minorities should warrant a liberal egalitarian intervention, because it does not come about as a result from the preferences and choices of the members of that culture, but from the choices of other citizens, (Kymlicka 1995: 169). However, this situation can not be rectified by liberal egalitarianism because "there is no general requirement that liberal egalitarians intervene on behalf of people who find that the options they value are expensive or unavailable because of the choices and preferences of others" (Patten 1999: 395).

In general then, liberal theory is concerned about equal treatment of citizens not cultures. Just because the liberal state is concerned with treating its citizens as equals however, it does not follow that there should be equal group opportunities for prosperity. If, for example, it is sociologically documented that Protestants fare much better than Orthodox due to the differing work ethic of the two communities, it would not be a duty of the state to aid the latter. Neither does it follow that every citizen has a right that his/her culture be as healthy as all the others. Cultures are evaluated from the market point of view, and there they come and go. One can regret the loss

of a minority culture for various reasons, but one can not claim that the government has behaved unjustly when the loss was brought about by the fact that the culture in question was not preferred by enough individuals so as to be sustained. Neither can one blame the choices of the majority for such a destiny. As Patten explains:

...there is no general requirement that liberal egalitarians intervene on behalf of people who find that the options they value are expensive or unavailable because of the choices and preferences of others. Some people, for example, prefer independent films to Hollywood blockbusters. Unless they live in a big city, however, or go to considerable expense of traveling to a big city, this option will probably not be available to them because the preferences and choices of most other people are different. This is a case in which some people find their preferences frustrated by the choices and preferences of others, but it is not one in which liberal egalitarians would call for intervention. For liberal egalitarians, it is fair that those with minority film preferences should have to pay a relatively high price to satisfy those preferences because the resources they are asking others to give up— e.g., the use of local cinema—are relatively precious to those others (Patten 1999: 396).

To conclude the criticism of Kymlicka, we need to point out that a liberal state can not rightfully restrict the rights of the majority citizens to reside in a public land or to have public education and other facilities in the official language, if it is different than the language of the aboriginal community, even if this threatens the life of the natives as Kymlicka seems to indicate.

It becomes clear that Kymlicka fails short of providing us sufficient reasons why liberal egalitarianism should support minority cultures. How are we to reformulate the argument? Before tackling this important question, let me briefly outline the crucial tenets of the liberal thought. Liberalism constitutes a complex, multifaceted family of doctrines, a “kind of umbrella that can include a variety of particular liberal philosophies” (Hampton 1997: 178). Nevertheless, all sorts of liberalism share certain fundamental conceptions, such as the commitment to the freedom and equality of individual citizens. Liberal theory presumes that all individuals are equally entitled to respect, regardless of class, gender, or nationality. Indeed, in a just society the liberties of equal citizenship are taken as settled (Rawls 1971: 3). The liberal democratic state has the best chances for securing freedom and equality when it respects the autonomy of its citizens, thus refraining from intervention in the individual’s constructions of his/her own life plans - his/her ‘conception of the good.’ A liberal is devoted to the concept of individual autonomy, she is “convinced that the best way to ensure that an individual can flourish within her community is to give her the freedom she needs to live (what will surely be) a highly social life in the way that *she chooses* [emphasis added]” (Hampton 1997: 186).

Besides, liberalism acknowledges that individual beliefs about the good life are fallible and revisable; they might be changed in the light of new information and experiences. Individuals do not view themselves as inevitably tied to the pursuit of the particular conception of the good and the final ends which they espouse at any given time are ‘capable of revising and changing this conception’ (Rawls 1980, see also Kymlicka 1995: 81-2). Consequently, besides letting individuals pursue their own conceptions of good life, a liberal society is concerned with enabling people to find out about other ways of life through mandatory education and freedom for expression. Although a liberal state does not oblige individuals to revise their conceptions of the good, it nevertheless endows them with an environment where

they can choose to do so. Liberal concern for the right of individuals for autonomy renders equal attention for different cultures possible: if the state does not privilege particular autonomous choices of the good life, including particular cultural preferences, then we can think of it as treating all citizens as equal, and consequently, as being liberal.

What is then the 'proper relationship' between liberal theory and nation-building? What reasons can a liberal give for state engagement in the nation-building process? Let us, then, closely look into what exactly the process of nation-building entails. Within nation-building, the diffusion of a national language and culture strengthens the democratization in that state. On the one hand, all citizens, regardless of their ethnic and regional origins, religion, or gender, acquire a tool with which they can use to participate in the democratic processes of the state. As a result of this process, peasants, businesswomen, priests and wine-makers acquire fluency in the official idiom of the state, fluency that provides them with the opportunity to participate in the democratic affairs of their country. In fact, the liberal state, which has a commitment to equal respect and equal opportunity for all its citizens, has an obligation to diffuse the dominant language among the whole population. When there a need arises the state will diffuse more than one official language on its territory. Through the process of nation-building the liberal democratic state provides information about the functioning of its democratic institutions, thereby advancing the democratic prospects of the country. Given that collective political deliberation is only feasible if participants understand one another by learning the official language, all citizens have an equal opportunity to participate in the common institutions of government, therefore, when the state promotes a common national language. The process can be seen as enabling democracy, even "a more robust form of deliberative democracy" (Kymlicka and Strahle 1999: 69). The official language, in this view, is the necessary tool for participation in and understanding of state institutions. Having one official language as an institution linking members of various ethnocultural groups is indispensable, if the danger of an unmanageable Babel is to be avoided. If citizens cannot "understand one another...then democratic politics will inevitably be compromised" (Patten 2001: 701). Under such circumstances there are "no reason[s] why the requirement would conflict with liberal principles" (O'Hagan 1999: 151).

Additionally, by learning the official language all citizens become competitive in the national labor market. In the modern economy, jobs require a high degree of literacy, education and communication skills, which citizens acquire through nation-building. According to Ernest Gellner, mass education in a common language was not initially instituted in order to promote equality of opportunity for all citizens, but it was a functional requirement of economic modernization (cf. Gellner: 1983). However, the nationalization of education was quickly adopted by the social democrats as a crucial tool for greater equality in society. Moreover,

national systems of education, providing standardized public education in a common standardized language, succeeded in integrating backward regions and the working class into a common national society, and made it possible (in principle) for children from all regions and classes to gain the skills needed to compete in a modern economy (Kymlicka and Strahle 1999: 70).

In other words, all citizens, through nation-building, through the diffusion of a common language and institutions throughout society, are offered the equal opportunity for success: equal access to educational and economic opportunities, as

well as to legal institutions and government services. Consequently, the nation-building process not only enhances democracy, but also provides citizens a chance to acquire skills essential for advancement in their careers.

Finally, it can be argued that the process of nation-building engenders trust between members of different cultural or ethnic groups within the country. Any given country needs to develop a sense of community among members of various ethnocultural groups if it is to sustain itself as a political entity over a long period of time. As trust is one of the prerequisites for the sustenance of a community, and one of the prerequisites for trust is the possibility of mutual understanding among the citizens of the polity. (cf. Barry 1999). The minimum required for developing a shared understanding among peoples is a common medium of communication, which is exactly what nation-building attempts to fashion through the policy of teaching all citizens an official language(s). Note that this is a minimum requirement, neither it is sufficient nor most important one. As Adeno Addis has pointed out,

although a common language may make it easier for trust to develop among members of the political community such that there will be less resistance to distributive as well as egalitarian policies of the government, clearly a common language is not a sufficient or even the most important condition for trust to develop among groups within the political community or for distributive policies to be effected smoothly. One need only point to the United States to see how this is so. Blacks and whites clearly speak some version of the same language, but if there is anything that defines their relationship, it is mistrust. (Addis 2001: fn164)

Many multiculturalist look unfavourably at the process of nation-building. They claim that it violates liberal neutrality, since benefiting the language and culture of one group of people within a given state over that of another. If national-building were problematic because it unjustly benefited a specific group of people within the state, perhaps a solution would be to separate culture from nation-building. But this is challenging if not impossible task to accomplish. Indeed it is difficult even to imagine a state disentangled from the culture of a given nation since in the real world almost all liberal states “have a dominant culture and value system” (Moore 1995: 904). As those who create the political system “legislate its laws, occupy key political positions, and run the state bureaucracy have a culture that they can not avoid bringing into the political domain, the separation between the state and culture is revealed as an impossible endeavour” (Tamir 1993: 149). The state may be able “to be neutral towards all religions within its borders by not having an established religion, but the state can not help but choose a language, and consequently at least partially establish a culture” (Addis 2001: 748). Indisputably, then, any given political system operates within a certain cultural framework and nation-building would inevitably be tied to a particular culture, language or history. After making such arguments multiculturalist writers usually offer arguments for alternative nation-building methods.

However, the solutions offered by Kymlicka and others, are not only controversial in themselves as we will see in later sections of this publication, but are based on a faulty premise. The last paragraph assumed that there is an unjust dimension in nation-building which is why multiculturalists put forward their arguments for minority rights claiming that the state is not neutral during nation-building. However, the point I want to make here is that nation-building is not problematic from a liberal point of view because it does not break the neutrality principle. The neutrality that is broken by the nation-building process is neutrality of

effect, principle which has been abandoned by liberal egalitarian theorists as unpractical and unjust. From a mere functional aspect any given state needs an official language, for it needs citizens who will not only be able to understand each other, but also to communicate with governmental officials and participate in the political culture shaping the policies of the state. The need for a common language does not mean that a political community cannot choose two or more languages as official ones. In a country where there is a linguistic minority sufficiently large, its language can also be official either on the whole territory of the country or in the areas inhabited by this minority. In this sense, nation-building, understood as the process which provides all citizens in a given polity a tool for participation in political life and a tool to be used for competing on the national labour market, while at the same time engendering trust among the members of various ethnocultural groups within the country, meets well the requirements of justificatory neutrality. Although it may be the case that typically the nation-building process is undertaken through the medium of the language of the dominant ethnic group, the reasons for this are independent of any conception of a good life citizens hold. While nation-building might indeed support cultural aspects of life that are well grounded in the conception of the good life of members of the majority nation in the given country, the reasons for which state officials decide to conduct a process of nation-building are independent of that conception of a good life. Consequently, a nation-building process based on the majority language does not necessarily go against the basic postulates of the liberal theory since it passes the requirements of justificatory neutrality.

The point is that via nation-building we can justly diffuse a particular linguistic medium across the population of the country. The official language does not necessarily have to be taken from those spoken within a country, a government might decide to adopt and diffuse a foreign language across its territory for example. As Brian Barry put it “[n]o doubt every language has its own singular excellencies, but any language will do as the medium of communication in a society so long as everybody speaks it” (Barry, 1998: 316). Indeed, in some African states consisting of numerous ethnic groups the language(s) of the former colonial power is/are granted official language status. This does not need to be an exclusive development. As mentioned before, there will be situations where there would be a need for more than one language to be inaugurated as official languages. If two large ethnic groups, for example, live more or less spread around the whole territory of a particular country, then it would make sense that both these languages are adopted as official throughout this nation. Different linguistic distribution of the population will require different provisions as to which language(s) is to be understood as the official language(s), which language(s) is to be official in a particular region, municipality and so on (cf. Patten 2002). The key aspect to understand is that as a general principle, a state has a legitimate right to promote a given language(s) to be used by all citizens and that this is not illiberal or unjust.

What could be a problematic aspect of nation-building is the idea that if one language is official on a given territory, then everyone is not only obliged to learn it but also to have his/her education in this linguistic idiom. If we have defended the need to diffuse a language(s) throughout the territory of a single country, this does not imply that all the education must be conducted via this medium. Minorities around the world resist this imposition, demanding their own language to be used for education purposes. If members of national minorities learn the national language, then what is to be done about their demands for alternative nation-building processes and education in their language? The issue of equal treatment of all

citizens, regardless of their credo on what constitutes well-being in life, arises when a state denies the members of minorities the right to develop and use their own language and culture and have education in their mother tongue if they desire it.

This is not a trivial issue, because if denied the opportunity and means to enhance their own particular culture and language, the individuals of the minority culture, who might already feel marginalized by the nation-building process conducted in the language of the majority, might become increasingly politically mobilized and agitated. Individuals of minority cultures seeking to promote their own distinct language and identity are not satisfied *only* with the formula of 'colour blind laws applying to persons of all races and cultures', since these might not necessarily treat all citizens as equals, and might therefore be inadequate to meet minority demands. In fact,

given that the social stigma of certain differences are sustained and reinforced by public blindness, public recognition of different identities is then claimed in various forms as a move for the substantive inclusion of members of marginalized and oppressed groups on the same footing as members of majority. (Galeotti 1999: 46-47).

We must point out that liberal theory's emphasis on citizens equality cannot be satisfied if certain individuals within the state have public assistance in learning their language and others do not. If the language and culture of the majority population is publicly supported while that of the minority is not, despite the requirements of individual members of this minority, then we have a violation of the liberal principle of equality among the citizens of the polity. How does equality relate to the neutral nation-building process and teaching one's language?

The issue in question here is maybe best described by a hypothetical situation related to experiences from ordinary life. Imagine that you are the parent of three youngsters, Aleksandra, Biljana, and Vesna. All three of them have different preferences for what to eat at snack time between lunch and dinner. While Aleksandra's and Biljana's favourite snack is oranges, Vesna prefers chocolates. Now imagine that all three of them caught the flu. As a parent, you offer your children medicine so that they get better, so you want to give them vitamins, and vitamin C in particular, in a bigger dosage than they usually consume. Perhaps it is around the time for having snacks and you realize that you have ran out of proscribed tablets of vitamin C and you decide to give your children oranges since they are a source of vitamin C. Or maybe you just think that your children should consume vitamin C from natural products, like oranges. All three of your children readily take and eat the oranges. After some time, however, Vesna calls you up to demand a chocolate. After all, she says, while her sisters have got their usual snack, she has not, and so she has the right to get it. She knows that she had to eat oranges to get healthy, but now she has cravings for chocolate and demands that she has a right to some because her choice for snacks was not satisfied unlike that of her sisters. What do you do in such a situation? Is the demand made by Vesna for equal treatment with her two other sisters justified? How equal would this treatment be?

Imagine that the two sisters, Aleksandra and Biljana are members of the majority nation, Vesna belonging to a minority culture. Think of the oranges given when they are sick as goods necessary for all citizens to have. Being proficient in the official language(s) of the country is one such item, which the state distributes to all citizens. Assume that in school, all three sisters would want to study and learn in their native tongue, Aleksandra and Biljana in the majority language, Vesna in the minority idiom. If for reasons of necessity, already mentioned in the text, the state

has to teach them the majority language, what are we to do with the claim of Vesna to have her own tongue taught in school? If the three sisters at snack time have to eat the oranges in order to get better, does not this mean that their normal choices for snacks have been satisfied but Vesna's has not been? So how do we proceed, in such a situation? Can we rightfully give Vesna a chocolate?

There are a number of reasons why would egalitarians like Rawls and Dworkin support what I call 'liberal nation-building', a process of nation-building that takes into consideration the interests of members of national minorities who wished to preserve their language, culture or particular aspects of it. Let us consider the situation in which members of national minorities find themselves in respect to the nation-building process. On the one hand they are content that the government allows them possibilities for learning the official language and culture and thereby becoming able to participate in the economic and political contest on an equal footing with the rest of the citizens. On the other hand, they might wish for equal government support for their national language and culture, things that they might perceive as important life choices. One could argue that it is the problem of members of national minorities that they were not born in the majority culture. But this kind of argument is unsound not only because minorities do not choose the predicament they find themselves in, but because the state cannot claim that a member of a minority culture who would like state assistance in preserving his/her language or culture has an expensive preference for well-being in life if, in the same time, the state supports education in the majority language. The conception of good life of members of the majority culture might not necessarily be shaped by the acquisition of cultural tools via the process of nation-building, in fact, it would be less likely that their well-being in life is satisfied only with acquiring of these goods. However, the tools they acquire, mainly the language, but also the cultural practices, and the familiarity with the nation's history, will be used for shaping their conception of well-being in life no matter what that might become. To treat members of the minority cultures differently than others would be arbitrary from a moral point of view, because the natural features of individuals, such as race, gender, age, or nationality, are factors for which people can not be held responsible. Although nationality in legal terms can be changed, renounced or acquired, this is difficult to do, and even when it is not the case than 'blending with the natives' is quite a huge task to be undertaken. One might easily become a naturalized citizen of a country, but to become fully accepted as one of the native citizens is much more difficult to achieve as it requires a painful process of acculturation, a process which many are never able to fully complete.

Consider the point made by Janos Kis on this matter, Successfully joining the majority demands more than assimilating to the high culture of the state-forming nation. In fact, the requirement is different. In order for someone to be accepted as belonging to 'us' group, she must first participate with faultless precision in everyday practices: she must first participate with faultless precision in everyday practices: she must speak the language with no foreign accent, she must not deviate from the accepted procedures of physical contact, she must have nothing odd about her gestures, she must move around in space and pick up objects the way 'we' have been accustomed or else she will be recognized immediately as an alien. These things are not all complicated, any child can easily learn them. Not by deliberate study, however, but by living with adults who provide models of behavior....The individual assimilating as an adult does not have that familial environment in which he could learn everything by spontaneous practice, and what is more, the learning skills necessary for

such acculturation are age-specific: they vanish with the passage of youth so that most adults are not capable of acquiring perfect facility in foreign ethno-linguistic culture, even in favourable surroundings. Thus, for many people, crossing over means.... not achieving full acceptance by the new, chosen community (Kis 1995: 210-211).

Therefore, it seems that if we extend Rawls' understanding of the moral equality of persons, treating people's highest-order interests differently on grounds of ethnicity would be arbitrary from a moral point of view. Given that both Dworkin and Rawls consider it important that the liberal state does not discriminate among conceptions of the good, and that individuals should be held responsible for what they choose to do in life, and granted the fact that members of minority cultures do not choose their position in society, then the government must take into consideration requests made by these individuals for support of their language and culture. If the state promotes nation-building in the language and culture of the majority nation without supporting the autonomous choice of individuals belonging to ethnocultural minorities to pursue a culturally and linguistically distinct life, this is problematic from a liberal egalitarian point of view. If the autonomous choices of members of the minority cultures are *different* from the state sponsored nation-building policies, then the state should provide such individuals with similar opportunities to fulfil these choices to those enjoyed by members of the majority nation. By failing to do so, the state would be discriminating against those members of minority nations willing to preserve their culture or some aspects of it, because they have to use their own resources, while the members of the majority culture would take cultural benefits for granted.

From a liberal point of view, given the unfair position in which the members of non- majority ethnic groups find themselves, granted the liberal value of equality and the importance of language and culture for these individuals, it seems just that the state should provide the members of the ethnic minorities who wish to do so, with the means to preserve their own culture. In other words, if we accept the liberal ideals of equality and freedom, and the *respect for each and every person's conception of the good life*, then denying members of the national minorities the equal possibility for realizing their life plans as a result of a nation-building process that neglects *their preferences*, obligates state support for the cultural choices of these individuals. If we are committed to treating all citizens with equal concern and respect, we must deal with the cultural preferences of the members of minorities in an even-handed way. No breach of neutrality is "necessarily implied in the notion of recognition of differences [in cultural preferences]" (Galeotti 1999: 48). The state has a duty to support minorities, because individuals within a minority culture are in an inequitable position vis-à-vis the members of the majority nation. While individuals of the majority nation take it for granted that their language and culture appear in the public domain, the persons belonging to the minority culture can not take this for granted. If the individual members of majority cultures have their language taught through the educational system, while there are minority persons who would like the same being done for their own language, then the state, in order to maintain the equality of its citizens, should also provide instruction in the given minority language. What is also important is that because the reasons for adopting a policy in support of minority cultures would be independent of any conception of the good life, the policy would satisfy the constraints imposed by the justificatory liberal neutrality.

Let us see how this is so. Unlike religion, where the liberal state can remain neutral, public education is very much a policy that is not innocent from governmental influences. While the religion of the majority population can easily

have an equal standing with those of the minority groups *because* the state can remain neutral on this issue and leave it to the private initiatives of its citizens, the state cannot be fully neutral about public education and other aspects of nation-building since a government always has to choose an official language, a language that is typically native to one section of the citizenry only. The citizens who do not speak this language as a mother tongue, and want to have an equal opportunity of education in their native idiom as the members of the majority section of the population do, should be supported by the state (cf. Barry 1998: 314). If they were not, then we would have an unequal situation whereby the members of minority population have to invest private funds and energy to open schools in their native idiom, while the citizens of the majority section of the population are being supported by the state. This kind of unequal treatment of the citizens of the state would be against the main ideas of freedom and equality of the liberal theory. Therefore, if the modern state wishes to follow liberal principles it has to adapt the nation-building process to the liberal postulate of equality of all citizens. A commitment to the equality of all the people in the political society will allow members of minorities to pursue their own conceptions of the good life with equal support from the state as for the members of the majority groups.

I will turn to the question of how to evaluate the extent of support of majority and minority cultures in terms of public expenditures later. Here, it is important to establish the validity of the principle of equal treatment for all members of the political community. If the individuals belonging to the minorities desire the preservation of their national culture and language, as they frequently do throughout the world, then a liberal state which, necessarily favours the majority language and culture through the nation-building process, needs to equalize the preferences of the two different groups of citizens and assist the minority. Public recognition and support for minority rights should counter the unequal respect publicly paid to the bearers of social differences, reversing their invisibility and including them fully into citizenship. This support can be given since 'the differences in question do not infringe the harm principle and is compatible with the liberal order' (Galeotti 1999: 48). In other words, if the liberal state 'functions to protect and perpetuate one culture, then surely liberal justice demands that it protects and perpetuate others as well' (Poole 1998: 121). This state, will then pursue policies that treat all its citizens equally. This argument supports equality of citizens' choices regarding culture based upon the undeserved circumstances in which members of national minorities find themselves due to the effects of the nation-building process.

Kymlicka's position in regard minority rights is thus, not quite justifiable within a liberal framework. While rightly pointing out that members of national minorities do not choose their endowments, Kymlicka fails short of providing justifiable reasons why the liberal state should support demands for minority nation-building practices. As I have pointed out, this need cannot come about because the 'minorities are outbid in the quest for resources', but because the state publicly supports the culture of the majority nation and through inference, the conception of the good of the members of this culture. In the aforementioned example, the state will need to account of the needs of the independent movie lovers only if it is shown that the government subsidizes cinemas that show Hollywood films only.

If we want to argue for liberal egalitarian version of nation-building, then we should point out that the state in the nation-building process unavoidably privileges a certain language or culture and that this puts minority persons who have preference for their own language and culture in an unequal position to the majority of citizens, no matter how important the minority culture and language is for members of the

minority. Our concern as egalitarians is that unchosen circumstances must not affect our prospects in life. If we can show that for certain reasons a state needs to implement a policy that gives advantage to some conceptions of the good, we have a claim that the state attend to our conceptions of the good in a similar manner, for otherwise we would be discriminated against. For, example, if the state for some reason must distribute certain goods to all blue eyed persons, we are entitled to demand an equal share of these or similar goods on the grounds that if we are all counted as equals, then we need an equal treatment, regardless of our relationship with these goods. We might not appreciate them at all, or we might think that they are necessary for our sense of understanding life in general, but this would not conflict to the justness of our claim to equal treatment. Correspondingly, it is not important to us whether culture is valuable to our freedom or not, the fact that some members of the society are given the means to uphold and develop it is itself a necessary condition for the state to attend our needs as well. Kymlicka has argued that “respect for the autonomy of the members of the minority cultures requires respect for cultural structure, and that in turn may require special linguistic, educational... rights for minority cultures” (Kymlicka 1989b: 903). I might value freedom within my culture or I might have an illiberal point of view on politics and uphold a traditionalist culture that does not value freedom, but this does not mean that my claim for equal treatment is invalidated and that the state does not have a duty to help my education in the native language of my ancestors. Supporting rights for members of minority rights is based on the need for equal treatment of the conceptions of life for which the liberal state stands. Given the commitment to neutrality and the equal respect and concern for the lives of all citizens in the polity, the liberal state needs to support minority nation-building. The argument about undeserved circumstances in which members of national minorities find themselves then, is the second argument in favour of more sympathetic national-building on the part of the state.

Thus, using liberal egalitarian postulates I have developed two outlines for the defence of cultural rights by members of minority cultures. The two arguments that I have given in favour of a liberal nation-building operate independently of each other. They both, however, conclude that the liberal state has a duty to attend to particular demands by minority members. In essence it was argued that a liberal state that respects personal autonomy, and *an equal respect for the autonomous choice of all citizens*, including individuals of minority cultures, to preserve their language and culture, asks for cultural sensitivity in the nation-building process, taking into account the importance of acquiring of national identity and treats it as a primary good needed for all citizens.

## 9. Some Typical Arguments Against Liberal Nation-building

I will now tackle a number of typical oft-repeated arguments against the introduction of liberal, just nation-building and the implementation of culturally oriented 'minority rights'. The first argument against ethnoculturally just policies of nation-building, which I will call liberal nation-building, generally posits the sufficiency of the present global human rights doctrine. The second argument commonly made against liberal nation-building includes relativism and the unnecessary social fragmentation that results from the process. I will take these questions in turn and will argue that they fail to provide necessary evidence against a culturally sensitive state.

Considering the question of the sufficiency of human rights, of the two arguments in support of minority rights, the first one could be called empirical, the second normative-liberal. As Kymlicka has documented, the doctrine of human rights has historically often proved unsatisfactory in protecting the vital interests of ethnocultural minorities (Kymlicka 1998a, 1998b). Consider for example that the two best known international documents concerning minority rights, the United Nations Charter and the Universal Declaration of Human Rights, do not directly deal with the problem of minorities. Both documents solely emphasize the right of all individuals including those belonging to minority cultures, not to be discriminated against on basis of race, sex, colour, language, religion, or political or other opinion.

The UN Charter in article 1, section 3, specifies that part of the purpose of the United Nations is to encourage "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." Article 13, paragraph 19, requires the General Assembly to "initiate studies and make recommendations for the purpose of . . . assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion." Article 55 of the Charter also provides that the United Nations will promote human rights "for all without distinction as to race, sex, language, or religion." And under Article 56, "members of the United Nations pledge to take joint and separate action in co-operation with the [United Nations]" to achieve the goals set out under Article 55. On the other hand, the UN Declaration of Human Rights, article 2, paragraph 1, provides that "[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion." Even later international human rights documents which on the surface appear to grant positive rights to members of national minorities, fail to clearly bring about this conception of minority rights. For example, Article 27 of the International Covenant on Civil and Political Rights states that

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

It is not exactly clear whether the right of these persons is to be seen as a right not to be discriminated against or as a more positive right implying state obligation to support minorities, although in the light of other international human

rights documents one is inclined to support the former interpretation. Adeno Addis for example, believes this right is rather a negative right, one which “highlights the fact that the anti-discrimination principle has often not been applied in relation to individual members of minority groups as it is to members of the majority” (Addis 2001: 744). For Addis Article 27 teaches simply that individual choices must not be constrained by the state for one group of individuals more than for other groups of individuals. Therefore, the article is, a negative right accorded to individuals. According to Addis, Article 27 guarantees that “persons belonging to such minorities shall not be denied the right, in community with other members of their group . . . to use their own language” (Addis 2001 :744). The same ambiguity is found in the 1992 United Nations General Assembly Declaration on the Rights to Persons Belonging to National or Ethnic, Religious, or Linguistic Minorities. Under Article 4(3), the Declaration states that “States should [not shall] take appropriate measures so that, wherever possible . . . minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.” As Addis comments “The use of the word ‘should’ rather than ‘shall’ as well as the use of the phrase ‘wherever possible’ indicates that what is contemplated here is the expression of what is desirable rather than what is mandated.” (Addis 2001: 744) Additionally, various region-wide documents on the rights of the national minorities fail to clearly indicate a concept of positive rights for members of minority groups. Various European documents concerning minority rights, such as the European Convention on Human Rights (ECHR), the Council of Europe Framework Convention for the Protection of National Minorities, the 1990 Copenhagen Document of the OSCE, and the European Charter for Regional and Minority Languages of the Council of Europe, are deficient or vague about the obligation of the state to provide positive rights to members of national minorities. In connection to the European Convention of Human Rights, Kristin Henrard argues that “...the degree to which the ECHR accommodated the wishes and needs of (members of) linguistic minorities is minimal. The protection is indeed explicitly limited to the implications of the *non-discrimination principle*[emphasis added]” (Henrard 2001: 50). Note, however, there are some positive developments in the jurisprudence of the European Court of Human Rights pertaining to minority rights in the sphere of education (Henrard: 52, de Varennes 2001).

Traditional implementation of human rights then does not properly address a range of complex issues which are fundamental to the preservation of minority cultures such as:

fair politics of language, education, and generally, fair distribution of scarce resources among competing ethnic and national groups...drawing borders between central, provincial and local units, and an appropriate and fair distribution of powers between each other (Bader 1997: 785).

Cultural diversity seems contingent on the introduction of ethnoculturally just nation-building. Empirical evidence shows that the promulgation of liberal nation-building and minority rights would help endangered segments of the population of states. This is what I label the empirical argument in favour of minority rights, suggesting that the present doctrine of global human rights as far as minorities are involved, is insufficient.

Empirical arguments are not, however, what we are looking for within a normative thesis. Also, empirical arguments are sometimes incompatible with liberalism. For example, liberal theory is not concerned with cultural diversity per se so to say that preserving cultural diversity necessitates the introduction of minority

rights/ethnoculturally just nation-building is not exactly to advance liberal arguments. Liberalism equally respects all individuals and conceptions of the good as long as they do not attempt to run down the liberal order. If cultures disappear or grow within the given state a liberal has no reason to interfere with. Liberalism contrasts to “communitarianism, radical multiculturalism, and the politics of difference [which] require that diversity should be a norm.” (Pavlovic 2002: 166). Still, what we can say is that the specification of minority rights in the contemporary state’s legislatures only clarifies previously existing liberal support for the doctrine of human rights. Minority rights, in other words can be derived from the system of human rights, as they are consistent with the liberal theoretical structure. As I have demonstrated using the theories of Rawls and Dworkin, liberalism supports minority rights because it supports the equality of all the citizens. Just, liberal national building, multinationalism, or ethnocultural justice, are concomitant with the ideas of the liberal theory. Besides, this kind of nation-building not only supports present policies in favour of extending a human rights chapter around the world, but also goes a step further by advocating more consciousness approach to the demands by individuals belonging to minorities. This then is the liberal-practical argument in favour of minority rights and against the supposition that there is sufficiency of the present doctrine of global human rights as far as minorities are involved.

Similarly to the view that ‘the present system of human rights is adequate’, is the proposition that ‘toleration or laissez- faire pluralism, is enough.’ This view holds that minority cultures do not need public support and recognition since they are free to develop in ‘private’, in the realm of the families or privately established institutions. Under this understanding liberalism

does not impose upon the majority any obligation to help the smaller cultural community succeed: if people are assimilated, that is the way of the world . . . [T]he state should not be in the business of trying to determine which cultures will prevail, which will die, and which will be transformed (Kukathas 1996: 686, 694, see also Walker 1999).

So, in relation to individuals belonging to ethnocultural minorities, the state has only the duty not to burden members of minorities in the use of their language(s) and in the practice of their culture(s) in the private realm. Nothing else and nothing more is required by the state, according to this view of liberalism. However, this assumption neglects the facts: if not properly tamed, nation-building might put individuals from different ethnic backgrounds in an unequal position regarding their ambitions to preserve their native languages and cultures. As previously hinted, if the members of minorities contribute to the state budget in equal manner as the majority ethnic group, as they most likely do, why then can only the latter can enjoy the cultural benefits of the public institutions and programs (Kis: 1995)? Tolerating of the practices of the minority cultures in the private realm is undoubtedly a liberal approach, but, if members of the minorities want public support for their activities, then toleration is not enough, such a situation would not be liberal solution. Liberal nation-building then, does seem a legitimate aim.

The third typical objection to liberal nation-building concerns the assumed inability to critically assess different cultures and their practices. Briefly described, the argument goes like this: ‘if we are to let diverse cultures flourish with their different understandings of morality and religion, different traditions and customs, and so forth, do not we then, suspend any critical judgement ? As Phillips (1997: 58) put it, “how are we even to arrive at any notions of right or wrong if multiculturalism imposes polite silence in relation to the practices of others?” However, the

assumption is mistaken. Liberal nation-building, by supporting members of ethnocultural minorities who view the preservation of their way of life worthwhile does not inhibit our ability to critically assess the practices of the various cultures and their traditions. Crucially, “equal respect does not mean suspending critical judgement: on the contrary, we do not take other cultures seriously when we *don't* consider them worthy of our critique” (Phillips 1997: 58). Equal respect commits us to view our culture as one among many.

Fourthly, liberal policies aimed at ethnocultural justice are often criticized as ‘excessively fragmenting the people in a country.’ This critique of liberal multinationalism argues that once we start granting privileges to the disadvantaged and members of cultural minorities then there can not be consistent in the implementation of the legal order; we are not able to accommodate minorities and achieve fair representation for all disadvantaged groups. Alternatively, the critique alleges that recognizing the legitimacy of cultural claims threatens uniformity of treatment. Both of these assertions however, are inapt.

As I have previously stressed, liberal nation-building is firmly based on the liberal principle of equality. Uniformity of treatment is exactly what liberal nation-building aims at reducing since members of ethnocultural groups justly require different treatment in the nation-building process, the uniformity of individuals of the majority ethnic group must not be confused with consistency in treating people as equals. Treating people equally does not always coincide with treating them as equals, which is precisely the aim of liberal equality as Ronald Dworkin put it (Dworkin 1985a). Treating people as equals is not the same as uniformity, as it involves both ignoring irrelevant and taking into consideration relevant differences between the various predicaments of individuals within a society. Equality and consistency under the law is exactly the essence of liberal democracy, uniformity of treatment however, is not necessary. Inconsistency would “compromise equality of citizenship, but consistency does not translate into uniformity, and often requires distinct differences in treatment” (Phillips 1997: 61). Moreover, for members of minority groups that have experienced discrimination and marginality, equal treatment frequently means unequal opportunities and capabilities (Fiss 1977). Therefore, preferential treatment for members of marginalized groups within a system of minority rights is consistent with the principles of liberal justice.

Additionally, we should not mix up demands made by diverse social groups or associations with demands made by ethnic minorities and systematically disadvantaged groups. Thence, we should not fail to differentiate the demands made by for example, the Vegetarian Union or the Association of Pizza-Lovers for greater inclusion of their products in the public restaurant menus, with the demands made by minority groups who would like public schooling in their native language. We should not overlook the discrepancy between the request of the Orthodox Church for Orthodox religious teaching in public schools with the calls by the Immigrant Association for achieving full citizenship and greater participation of all immigrants in the political process. The former demands are clearly oriented at modifying the general public's conception of the nation (by introducing religious lessons, or changing the eating habits), the latter are aimed at preserving a minority way of life, affected by the majority nation-building. Of course, a person may claim that eating pizza everyday is his/her own conception of the good in life and that without being able to eat pizza in all the restaurants in the state he/she would lose his/her own identity and culture. However, such a claim would be preposterous since it is not in the business of the state to help people achieve their goals in life. Pizza lovers can not impose their views on the rest of the population forcefully. Members of minority

cultures as we have seen are often in different position from the majority population regarding the state support for the preservation of their culture because the state neglects their preferences. Such situation is condemnable and needs proper liberal approach to be implemented, one that will tactfully respond to the needs of the minorities in question.

A state that pursues liberal nation-building is not only a just state, but also stands to gain a support from all its citizens. As Kymlicka has stressed, "people from different national groups will only share an allegiance to the larger polity if they see it as the context within which their national identity is nurtured, rather than subordinated" (Phillips 1997: 133). The principle of liberal nation-building, then, is helpful in bringing in together the ethnic groups in a given country under a common solidarity feeling. Rather than trying to wipe away ethnic differences, a project that is not only unjust but also one that has historically failed throughout the world, a multiethnic state might only benefit from engaging in policies that help cultures of different distinct ethnocultural groups. Given that few if any national groups in the last one hundred years have voluntarily assimilated, despite severe legal and economic pressure to do so, ethnoculturally just liberal nation-building might be the most expedient option for the modern multiethnic states (Connor 1972: 350-351). As Anthony Smith put it, "whenever and however a national identity is forged, once established, it becomes immensely difficult, if not impossible (short of genocide) to eradicate" (Smith 1993: 131). Although secessionist drives in Canada and Belgium painfully suggest that liberal nation-building might still not be enough for a multinational state to hold on together, accommodating the needs of the diverse ethnic groups and a commitment to cherish cultural diversity, is the best policy option we have.



## CHAPTER 4

### Liberal Nation-building

#### 10. Who are the Beneficiaries? What Kinds of Rights?

As it becomes clear, we are discussing the issue of the right of equal treatment pertaining to individuals of minority cultures. On one hand, we stressed that the state should take into account the importance of acquiring of national identity for all citizens and treat it as a primary good needed by the entire population. The state is/should be required to protect this fundamental interest of its citizens as an individual right. On the other hand, we also argued that, given the unfair position in which the members of non-majority ethnic groups find themselves, the liberal state should provide the means to preserve their own culture to the members of the ethnic minorities who wish to do so. Again, the privileges which are meant to countervail the initial disadvantages suffered by members of minority cultures are inevitably lasting, since the inequality of the relationships of force between the state-forming groups are also lasting. They might need to be expressed as 'rights' (Kis 1995: 225).

Can we however, be more precise on the nature and the scope of these 'minority rights'? Exactly what kind of rights can members of ethnic minorities legitimately seek? What rights should be enjoyed within the liberal context of political organization of a state? Precisely which citizens are to become the beneficiaries of such 'minority rights'? To answer these questions I will first present Kymlicka's understanding of the issue, and then through a critique of his scheme propose a general framework of necessary minority rights pertaining to multiethnic societies compatible to the basic postulates of liberal theory. I will argue that a proper understanding of liberal theory's commitment to the principles of equality and freedom for all persons under a given state's jurisdiction allows for a liberal nation-building where *all citizens of the polity*, including individuals belonging to minorities, could legitimately become benefactors of such a process. The provisions assumed by liberal nation-building are just as long as they respect the individual freedom for each and every citizen of the state, but can not be legitimate if related to collective bodies *qua* corporate entities.

In contrast to individual rights, a right is a "group right only if it is borne by the group *qua* group." What distinguishes a group from an individual right is its "subject rather than its object - who it is that holds the right rather than what the right is a right to" (Jones 1999: 82-83). If the right is held by a single group entity, rather than by individuals as a joint group of separately identifiable persons, then we are talking about rights related to collective bodies *qua* corporate entities. If we are to respect each and every person as an having equal position vis-avis any other human being within the state, we should respect his/her right of choice concerning matters of 'culture' and 'nation-building' and avoid granting rights to collectives of individuals as corporate units. This is because such rights could clash with the individual choices of the citizens and negate their equal status. If we accept that there are such collective rights then they would not be held by human beings as such, but by larger entities, such as nations or peoples, conceived as corporate entities. Such a

situation “gives rise to the reasonable fear that individuals and their claims of right will be crushed beneath the greater weight of groups and their claims of right” (Jones 1999: 92). For if for example, the members of a collective entity, say an ethnic group, are endowed with the possibility of education in language X in secondary school, this must not mean that because an individual is a member of that same ethnic group he/she is compelled to study in this language. Such a stipulation would severely restrict this individual’s choices in the pursuit of his/her good life and would contradict his/her equal status in the society. Since the “corporate conception of group rights makes it possible for a group to hold rights against its own members because it accords moral standing to the group independently of its members,” (Jones 1999: 94) it is therefore unjust and should be avoided.

On the other hand, as we will become aware in the next section, certain provisions the government provides for the development of the culture and identity of members of minority nations can only be implemented if there are a sufficient number of individuals demanding such rights. In this sense, we can speak of collective rights that are within the scope of a liberal theory. Individuals who are members of these groups then would have the right to these benefits because a number of similar individuals share a common interest. In this way we can speak of group rights as rights that rest on the cumulative interests of many individuals. However, these rights do not presuppose that the group interests override the interests of a member of the group. The right for education in language X in the above mentioned example, is bestowed to a group of individuals who would like to study that language, and is a group right only because a sufficient number of individuals interested in education in language X can oblige the government to provide this public good. However, rights, “even collective rights, can only be there if they serve the interests of individuals” (Raz 1986: 208). The reason why we can label these rights collective or group rights is because the “interests in question are the interests of individuals as members of a group in a public good and the right is a right to the public good because it serves their interests as members of the group”, and because, “the interests of no single member of that group in that public good is sufficient by itself to justify holding another person [or the government] to be subject to a duty” (Raz 1986: 208). Therefore, the rights are related to the individual but dependent on the existence of other similar individuals with the same interests.

Focusing on the right to ‘culture’ and ‘nation-building’ respects the human dignity of all and provides everyone choices for decisions pertaining to his/her aims in life and definition of a good life. Liberal theory’s commitment to the equal worth of the human life is the most noble and humane conception. On the other hand, the understanding of the liberal theory that provides individuals possibilities for maintaining and developing particular qualities of life shared with other individuals guarantees and nurtures the universal needs to belong to greater, collective units. Later in this publication, I will discuss some of these issues in a greater detail. In this chapter, I will argue that upholding freedom and equality as postulates of liberal theory better satisfies the needs and the demands of persons belonging to different minority groups than new theories of multiculturalism based on different principles, which like Kymlicka’s ‘multicultural citizenship’ are misconstrued, although well intended.

As we are aware from previous discussions, Will Kymlicka has attempted to develop a model for a ‘multicultural citizenship’ based on what he calls a ‘liberal theory of minority rights.’ Dealing mainly with minority issues in ‘Western’ states, Kymlicka has proposed a three-fold differentiation of rights relating to groups of people: rights to self- government, polyethnic rights, and special representation

rights (Kymlicka 1995). Important to understanding this scheme is the distinction Kymlicka makes between national minorities and immigrants. For Kymlicka, national minorities, as opposed to immigrants who choose to join their new country, are groups of people who have been incorporated into the larger political entity of which they are now a part either by force or through other non-voluntary means. He refers to national minorities as "historically settled, territorially concentrated and previously self-governing cultures whose territory has become incorporated into a larger state", while the incorporation of such groups has typically been involuntary . . . [though] in some cases [it] reflects a voluntary federation" (Kymlicka 1997: 6). Thus, he uses the term national minorities:

"[T]o refer, not to immigrants, but rather to historically settled, territorially concentrated and previously self-governing cultures whose territory has become incorporated into a larger state. The incorporation of such groups has typically been involuntary, due to colonization, conquest, or the transfer of territory between imperial powers, but in some cases reflects a voluntary federation." (Kymlicka 1997: 6, 19)

Kymlicka insists that rights to self-government apply to multinational societies, where minority nations, or societal cultures as he calls them, are regionally concentrated in distinctive sub-territories (Kymlicka 1995: 27). He argues that this right can be best exercised in federal systems, where the regionally concentrated ethnic groups can form a separate federal unit, a practice well implemented in a number of 'Western' multiethnic states (Kymlicka 1998b). Drawing a parallel from the experiences in multiethnic 'Western' societies, Kymlicka argues in favour of the delegation of powers to national minorities through a form of federalism as a solution to the question of ethnocultural justice in the Eastern European pluralist states (Kymlicka 1998a).

Furthermore, Kymlicka argues that polyethnic rights, such as financial support, legal protection and state support for certain practices associated with particular ethnic or religious groups should apply to immigrant communities, and can only be exceptionally established in Eastern Europe. Only countries like Estonia or Latvia, with strong immigrant communities, would qualify for this category of rights. Finally, special representation rights relate to group identities indirectly: there the

issue is not what substantive ideas and cultural traditions should be given special status (as in polyethnic rights), but who should do the representation or whose chances to win elected office should be selectively improved, the guiding intuition being that the more people of category X are represented in parliament, the more forcefully the specific ideas and traditions of group X will be promoted (Offe 1997: 16).

Thus, special representation rights might, for example, guarantee seats for ethnic groups within the central institutions of the larger state. Kymlicka justifies group representation rights from the fact that there is a need for more representative political process that includes members of ethnic and racial minorities, typically underrepresented in the legislatures, "as a response to some systematic disadvantage or barrier in the political process which makes it impossible for the group's views and interests to be effectively represented" (Kymlicka 1998a: 32).

Opening the discussion of Kymlicka's ideas I am not sure whether his three-fold delineation of minority rights as group rights is appropriate. What justifies policies aimed at ethnocultural justice? Surely the fact that many individuals within the minority groups want to preserve aspects of their culture which are necessarily

being affected by the majority nation-building, and the need of the liberal state to treat all its citizens equally, advocates endowing the right to differentiated nation-building to such individuals. But why is it that some individuals belonging to particular nations should enjoy different treatment by the state than others? Why is it that some should enjoy self-government rights and others should be left only with polyethnic rights? Kymlicka makes two points here: firstly, that polyethnic rights are typically granted to territorially dispersed groups, namely immigrants, and secondly, and more importantly, that immigrants emigrate for economic reasons. They

have decided to leave their original society and culture, and emigrate to another, more prosperous society, with the hope of taking advantage of the greater educational and employment opportunities it provides...if they valued cultural maintenance over economic gain, they would not have come in the first place (Kymlicka 1995: 86, 96, Kymlicka: 1998a).

While I would empirically agree with Kymlicka's first point, which is that it is difficult to implement self-governing rights to dispersed minority groups, I can not see how can we make a legal distinction among the rights of the citizens and still claim that we treat them all equally, as a liberal state should.

Besides, I can not agree with Kymlicka's second point either. For while immigrants indeed emigrate for economic reasons, there is no reason why they should assimilate into the dominant culture and cease to exercise their own if they wish to. The autonomous choice of the individual to use his/her own language or to preserve his/her own culture should be respected as long as we want to treat these individuals equally with the rest of the society. Even if, as Kymlicka suggests, the host state recognizes the presence of culturally diverse groups and expresses 'a commitment to its immigrant citizens, and adopts its institutions to accommodate their identities and practices', I think this does not suffice. If the immigrants wish to preserve their own culture, establish their own cultural institutions, or have their own language taught at schools and recognized as an official idiom in municipalities where they constitute significant proportion of the population, they should be able to employ these rights the same way as national minorities do, or for that matter the same way as the rest of the population does if we are to implement the liberal principles of the equality of all citizens.

Why is that members of national minorities have advantages over the others in terms of what kind of state support they receive? From a liberal egalitarian point of view, represented in this publication by Rawls and Dworkin, they should both be seen as equal. Morally speaking, we can not justly distinguish between individuals from minority groups who have a long lasting tradition and those who have recently emigrated, because doing so we would treat these individuals on the basis of features over which they have no control. Since no one chooses to be born as a child of an immigrant, as opposed to the a child of a person belonging to a well established national minority, we can not take these endowments as relevant in treating them as equals, to use Rawlsian and Dworkian terminology. These facts of life are arbitrary from a moral point of view and should not enter our consideration about what kind of rights are we to bestow on members of national minorities and immigrants who want to preserve their cultures or specific aspects of it. As one of the basic premises of the liberal theory is that all citizens in a liberal polity should be treated equally, we should not make distinctions between the rights of the old and new settlers, between the hosts and the immigrants, between immigrants and the autochthonous minorities: all members of these communities should be treated accordingly, as equal citizens with the equal rights.

Secondly, even if we were to accept Kymlicka's argument about "waiving the rights" of the immigrants, still we must admit that second generation émigrés did not choose to be born in their adopted country. Children of Turkish 'guest workers' in Germany, for example, can not be viewed as clear cut immigrants. Born and raised in Germany, they are more of a national minority than immigrants from Turkey. How are we to determine what is a national minority, as opposed to an immigrant group? Would the grand-grand children of the Turkish emigrants to Germany still be considered as an immigrant group rather than as a national minority? How many generations have to pass between the German Turks can become national minority, if ever? Similarly, should a minority that was incorporated into a larger polity without its consent be now classified as a national minority,

even though it has been long while since that initial incorporation and although the minority had appeared to have accepted the cultural and linguistic union with the larger unit until recently when it started to demand official recognition for its language? Or should we require that such a minority show a continuous assertion of a separate identity before we can deem it a national minority" (Addis 2001: 765)?

Additionally, some immigrants do not emigrate voluntarily, refugees being the obvious case. This case also does not speak in favour of Kymlicka's distinction. Liberal equality makes a case in favour of cultural rights that are equally applicable to all citizens of the country, including individuals from all minority groups that request assistance in maintaining their culture, no matter how they came to become minorities. Or, as Geoffrey Levy has remarked,

rather than attach value to societal cultural membership as the context of the autonomy's exercise and draw a hard distinction between ethnic and national groups, the traditional liberal value on the exercise of autonomy itself should be preserved, whatever one's membership (Levey 1997:241).

The autonomous choices pertaining to nation-building and the preservation of one's culture should equally respect all citizens of the country, regardless of one's religious, national, or linguistic affiliations. From a liberal standpoint, it is clear that each and every individual member of a minority culture who wants his/her autonomous choices in life concerning culture to be protected deserves attention, no matter how big his/her minority group is and no matter how he/she became a member of a minority group in the first place. To deny these people consideration would be to privilege citizens of the majority culture. This would, in turn, violate the liberal principle of equality.

To the extent that our critique of Kymlicka's distinction between rights of national minorities and immigrants holds merit, the decision to limit the application of the European Charter for Regional or Minority Languages of the Council of Europe to indigenous languages, and thus exclude the languages of immigrants, is also unacceptable from an egalitarian point of view (Article 1, § a.). A state committed to the principles of liberal equality would implement a wide- range of policies aimed at equal opportunities for a nation-building at the request of members of a minority group. Different minorities will demand support for different policies of liberal national building. Although the concrete spectrum of policies adopted would necessarily depend on local peculiarities, the demands of minorities would generally include the following: public assistance for education in the language and culture of the minority in addition to the study of the dominant language(s) and history; support for cultural institutions such as libraries, museums, theatres, dance, musical or other artistic

groups, and public TV and radio programs; the acceptance of different customs and practices of minority groups by the law and thereby, the public and private entities; state support for historically under-privileged and under-educated citizens of minority nationalities, and accommodating public symbols, such as design of the personal identification documents, the names of the streets and cultural monuments, the choice of the public holidays and anniversaries, the national flag, the anthem, and the coat of arms, and the public 'spaces' such as city squares, streets and parks to the needs of all the citizens of the polity. Some of these demands will not be justifiable from a liberal perspective. Consequently, it will be of our concern to outline those demands for minority rights that can not be accommodated within a liberal egalitarian framework. Demands made by members of national minorities for different provisions will be discussed in more detail in the next sections of this publication.

## **11. Issues on the Subject of the Implementation of the Theory- The Modern State and The Scope of Minority Rights: Costs and Benefits?**

The liberal approach positing the equality of all citizens leads to a universalistic principle for culturally oriented minority rights. Culture and ethnicity merit attention and state assistance as needed, much as members of the lower economic classes draw the attention of liberal egalitarians and state redistributive policies. Ethnicity and access to culture can in no justified way be treated differently than class inequality. Egalitarian policies must correspond to both clusters of claimants. We must take into consideration that “the presumption that ethnicity is different, and illegitimate as a political identity, serves the purpose of ‘orientalizing’ large, and growing, numbers of societies, and of skewing our expectations of their democratic possibilities” (Young 2001: 220). However, given the economic restraints of the contemporary states, an obvious question surfaces concerning the scope of the implementation of policies aimed at improving the position of cultural minorities. In other words, how far can we pursue the principles of liberal equality aimed at ethnocultural justice in the modern world? Should we respect the right of, let us say, an Estonian who has settled in Macedonia to maintain and preserve his/her own language and culture? Should this Estonian be entitled education in his native language from kindergarten to university level? Or, should we observe the same right for the few hundred Macedonians who have emigrated to Hungary? On the one hand, it seems that from a liberal egalitarian perspective, which, in theory, respects the autonomous choices of all citizens equally, we should. On the other hand, in practice this is close to impossible to implement in certain areas of life. A liberal society concerned to equal respect all its citizens equally in a multicultural context would face policy dilemmas which require expensive solutions, and sometimes so prohibitively expensive as to preclude successful of implementation. To give one example, there is a definite limit to the number of languages a state can recognize as official.

Let us consider this policy dilemma in detail. As it has been explained in the previous section, the core question of the right to preserve one’s own language and culture revolves around the impossibility of the modern state to be impartial in the nation-building process. Given that the state in the nation-building process opts to use given official language(s), all those who would prefer education in another language are disadvantaged in that, that the state does not provide them means to do so. If these people are denied such right to alternative nation-building then this would mean that the state partially chooses to allocate funds to the preservation and enhancement of one language and culture over another. But since we can not say that one language and culture are of higher value than some other then how can we have just nation-building and language usage policies? (cf. Kis 1995: 207) Is it not the fundamental premise of liberal theory that all citizens are treated equally by the state? Are those citizens who would like to pursue their autonomous choices of good life through the medium of a minority language, and who are not supported by the state in this endeavour, treated equally as the individuals who belong to the majority culture, whose language is publicly supported by the state? How are we to establish a just framework for satisfying the needs of the members of the minority cultures?

Various authors have suggested, that realistically speaking, in the modern world the right to cultural maintenance can not be taken as an absolute right enjoyed by members of all minority ethnic groups at any time at any cost, since this right can only be meaningfully exercised if a specific numerical and organizational kind of threshold is fulfilled (Levey 1997: 224, Margelit and Halbertal 1994: 500-501, Offe 1997: 23, Raz 1994: 174, Tamir, 1999: 18, Varady 1997: 41). A right in this sense, is a public obligation corresponding to the interests of the individual who bears the right, and corresponds well with the concept of rights as explicated by Joseph Raz. Individuals have rights as so far as if there are sufficient reasons to hold the public at large under obligation to attend to their interests. Raz understand rights as a sufficient ground for holding another to have a duty; thus, "X has a right" if and only if X can have rights, and, other things being equal, an aspect of X's well-being (his interest) is sufficient reason for holding some other person(s) to be under duty" (Raz 1986: 166). To assert that an individual has a right "is to indicate a ground for a requirement for action of a certain kind, i.e. that an aspect of his well-being is a ground for a duty on another person [or government]" (Raz 1986: 180).

This approach gives us a good hint whether the interests of each and all of the minority members are sufficient for the state to support their cultural institutions. The state and the minorities have to balance the needs and the costs of any specific issue: "a lot of prudent balancing and context sensitivity are required in all those hard cases" (Bader 1997: 785). However, it must be again repeated that the fact that realizing an individual right might be too costly does not eliminate the justness of the claim to the right. As I have already pointed out, liberal theory does require equal treatment of *all* citizens in a given polity. Perhaps in an ideal world this would mean that members of all minority cultures, no matter how small should be able to obtain state assistance in as wide range of policies and spheres regarding the maintenance of their language and culture as they deem them fit: education in the native language, public media programs, theatres, and so on. I will discuss later whether this would be a just option and to what extent public goods can be allocated to cultural programs of minorities. For the moment we should say that we are aware that in the real world the modern liberal state does not have unrestricted resources. Different authors have indeed argued that in the contemporary liberal state, as far as the members of the national minorities are concerned, the implementation of the liberal principle of equality must be fulfilled while taking into consideration the economic possibilities of the country. Accommodating the needs of members of minorities "must depend on the feasibility and the costs of that accommodation" (Jones 1994: 43).

In this respect, I believe Yael Tamir's distinction between matters of principle and matters of policy is sagacious. While as a matter of principle "the right to practice a culture, like all other rights intended to protect the interests of individuals, is an individual right", as a matter of policy "it might be justified to obligate others to carry the burdens that follow from the realization of this right only if there is minimal number of individuals who will benefit from it" (Tamir 1993: 45). Accommodating of minority interests, therefore, should not be too costly burden to the public at large (Cf. Levey 1997: 236-237). For example, the state would not be obliged to provide the Estonian in Macedonia with full institutional framework in which he/she would be able to preserve and develop his/her Estonian culture. Although this Estonian, according to the postulates of the liberal theory for equality of all citizens, has the right for such state support as a matter of principle, he/she, should not expect the realization of such demands as a matter of policy, since this would be too costly a venture for the state and the other citizens of the polity.

Realistically speaking, as Bader writes, “no inclusive or complete equality for cultural minorities can be expected, achieved, or required....no abstract and general solutions are possible and much practical knowledge and intimate experience are needed” (Bader 1997: 797). However, the fact that there is no general solution to minority demands does not mean that they are “beyond resolution” (Bader 1997: 797).

Thus, as Tamir points out, the fact that the state would be too heavily burdened if, for example it were to have schooling in Estonian only for one person, this does not mean that the claim for a cultural right of this person is not just, or that it can not be realized in a more modest form which would satisfy the needs of this individual. For example, fulfilling this person's demands for the preservation of the Estonian language and culture might be satisfied through a student exchange program that would either bring some Estonian students to Macedonia, or give this Estonian the opportunity to study in Estonia. Such policies may not correspond exactly to the wishes of the Estonian in Macedonia, but would be economically more feasible and would still partly way fulfil this person's desire for education in his/her native tongue. The size of the minority deriving benefits from a state's liberal, and ethnoculturally just policy matters with regard to implementation. In the present state of affairs in the modern world, numerically weak national minorities can not realistically hold the state responsible for providing a full list of culturally oriented rights and benefits; they should be satisfied by less. However, when a specific numerical and organizational threshold is fulfilled, demands by individual members of minority groups should be fulfilled by the government. Where exactly this threshold lies can not be answered on a theoretical level. Different educational theories specify different views on what is the minimum number of pupils or students needed in order to have a meaningful class discussion. Evidently, the government can take into consideration the minority demands for lowering the numbers of students necessary to form a class but this can not be done to the extreme. Where to draw the borderline is not a topic for us to discuss here. Very frequently, though, precisely the unfulfilled demands of political representatives speaking on the behalf of the individuals of specific national minorities are the cause of violent and prolonged conflicts. Therefore, the central authorities, in respect of the liberal principles of freedom and equality, should gratify the cultural needs of all individuals belonging to minorities, for the nation-building process to be just.

How are we to frame the discussion of the scope of minority rights within the liberal egalitarian framework used by this publication? To ascertain precisely the limits of public support of minority cultural practices, I shall turn to Dworkin's discussion concerning the dilemma of state support for art and culture. Building my argument on the premise that Dworkin's account is inadequate, I will propose an alternative approach to the issue of when, and how much the state can support art and culture. I will argue that Dworkin's position violates state neutrality and thus is unsatisfactory from a liberal point of view. In turn, my approach will be grounded on the respect for the principle of liberal neutrality between the conceptions of the good of various citizens and will be useful not only in matters concerning support of arts and culture in general, but also regarding the scope of the state's support for minority cultures.

Let us proceed with this argument in more detail. Despite the view that the state should be neutral among the conceptions of the good, Dworkin contents that the liberal state may provide support for cultural institutions and the arts, when the market fails adequately to support such communal activities. Dworkin emphasizes the importance of preserving a rich, innovative, and diverse cultural structure. Such a

structure is needed so as the citizens can formulate, revise, and critically examine their conceptions of well-being in life. For Dworkin, cultural structure is the language citizens employ in articulating and developing a conception of the good. A cultural structure that is rich in content greatly contributes to the possibilities of having a good life. Given that a rich culture might not be maintained through the mechanisms of the market economy, Dworkin believes that the state can and should subsidize the arts. He writes that “the choice between art and the rest is not a choice between luxury and necessity, grandeur and duty. We inherited a cultural structure, and we have some duty, out of simple justice, to leave that structure at least as rich as we found” (Dworkin 1985b: 223). So he claims that we have a duty to support art from decaying, so as to protect the interests of future generations in having a rich cultural environment. Additionally he maintains that we have compelling interests in the protection of rich and vibrant culture.

As it has been argued, Dworkin’s position on the state support of culture can not be well suited in the paradigm of liberal neutrality (cf. Macleod 1998, ch.7). On the one hand, Dworkin’s assertion that arts are not a luxury but a necessity seems dubious since very “many people manage well without [it]” (Mendus 1989: 138). Another problem is that if we use public funds to support arts, we would be tampering with the market-derived outcomes and act partially in favour of some conception of the good life. Provided that the state has undertaken the mechanisms of just redistribution of income and resources among the citizens, then this is a default position from which personal preferences for art are not to be disturbed. Public support of arts through funds collected via taxation cannot be justified through liberal egalitarian principles (Brighouse 1995: 52-53). When the “background distribution of income and wealth is unjust, rectifying that injustice is the urgent task of the government, which task is unlikely to be significantly furthered by funding the arts” (Brighouse 1995: 52).

Additionally, if we have a state supporting the arts, we will have a problem concerning the state’s judgement about “which types of cultural enterprises are worthy of support and which are not” (Macleod 1998: 194). Dworkin states that the objective of state’s support of arts is to preserve and promote a “rich cultural structure, one that multiples distinct possibilities of value” (Dworkin 1995b: 229). According to Dworkin, a rich cultural structure presents options that are “innovative and diverse and display complexity and depth” (Dworkin 1995b: 229). However, deterring which elements of culture present genuine opportunities of value in this sense implicated the state in judgements about what constitutes ‘human excellence in various forms of culture’” (Macleod 1998: 195). Dworkin’s position then, forces the state to make judgements about which forms of cultural activity merit support, and therefore violates the principle of liberal neutrality. Indeed, “there is a good reason to think that Dworkin’s criteria will favour the kinds of art currently consumed by those who are already socially advantaged in various ways” (Brighouse 1995: 55). If the state supports some activities that I find valuable for my conception of the good, say opera, then I can save resources that otherwise I would have to spend to buy opera tickets and use them for other purposes. But, then I would not be in an equal position to that of my neighbour who has to pay for activities that he values as good, which the state does not support, such as dancing to house music. Support for arts will then turn out to be support for some people’s conceptions of the well-being in life and would embody a principle of partiality and perfectionism rather than neutrality.

If various cultural activities are important to individuals, as we have so far argued in this publication, then surely it makes sense that the state publicly supports them while treating all citizens as equals. What does this mean specifically? We saw

that the problem with having the state decide if opera is more valuable than house music involves perfectionism and violates liberal neutrality. But, how then are we to use public funds and uphold cultural practices without breaking the requirements of neutrality? In one passage, Dworkin makes a proposal that might help us in deciding how to do this: he suggests a scheme for providing support to the arts in which individuals are entitled to tax exemptions for the contributions they make to cultural projects (Dworkin 1995b: 233). This way individual citizens will decide how much support various projects receive. Dworkin however, believes that this might not be sufficient, while additionally, another problem would be also that “the state would have to decide which kind of projects qualified for the programme of tax exemptions...and such decisions will...be predicated on judgements about the value of different options” (MacLeod 1998: 196fn).

To decide which kinds of projects qualify for tax exemption and which kinds do not, we need to take the preferences of citizens into account. On the one hand, we could adopt a system where the state budget for cultural activities will be suited to reflect the dispositions of the citizens concerning which kind of activities need state support. Thus, the tax forms could ask all citizens what they would like the tax money the state uses to support cultural activities to be used for. There could be a list of already existing institutions, such as opera, the philharmonic orchestra, theatres, dancing houses, and so on, to choose from. At the end of the list there could be a designated space to write in an additional option thought worthy of support by the citizen filling the form. This way, all sorts of human activities could be allowed to figure as cultural forms in need for public support, depending on the choices of the citizenry. A techno music club would thus become a legitimate option. Based on the results of this annual survey, the state would allocate funds to different existing cultural institutions, such as operas, theatres, or classical music philharmonics. The amount spent on specific cultural institutions would correspond to the share of the budget citizens preferred to be spent on this cause. For example, if twenty percent of the citizens prefer that public funds aimed for cultural activities are to be spent on theatres, the state will need to allocate twenty percent of the budget aimed for support of arts and culture to theatres. However, if there were a number of theatres, then there would be a question how to spend the money allocated for support of theatres. Theatres will differ in size, some will have fewer performances, some more, others would have them once a week, and yet different others will have shows once a month. Specific criteria would have to be brought into consideration in these types of cases. The decisions could be made according to the number of visitors of the performances, depending on the number of acts performed or something similar.

On the other hand, if there would be demand that funds are spent on activities where no public institutions are developed, the state would be obliged to found them, or alternatively to support existing private ones. In any case, all the citizens in the polity will have incentives to show their preferences since otherwise the conceptions of the good life of other people would be counted more weightily concerning the state use of public funds. Under such a scheme, there might be a danger that well-established institutions of high culture like the opera would not be preferred by citizens. Other citizens might not be satisfied that certain cultural activities that they deem important were not supported by public funds. For these reasons, individual choices concerning the use of public funds for cultural related activities could be related to the possibilities for tax exemption, so that if an individual prefers opera to be given public funds and his/her choice is not supported by many other citizens and consequently, opera is minimally supported by public funds,

he/she would be given the right of tax exemption for funds he/she uses in support of the opera. This way, on the one hand, the individual choices of citizens will equally matter in public policies concerning culture. On the other hand, those citizens who would not be satisfied with the public use of funds based on the preferences of all citizens would have the possibility to further support the institutions of their choice through tax exemptions. If, under these circumstances, an opera is still not valued and funded by citizens, then this would be a sad fact for many who value opera, but would not be an unjust situation. If an opera can neither attract possible sponsors, nor collect sufficient revenues from ticket sales, it will have to close. The important issue with this scheme is that it preserves the neutrality of the state, while in the same time reflects the fact that various cultural activities are important for citizens' concepts of well-being.

This kind of solution regarding state support for arts can be used for tackling the question of how much support institutions of value for minority cultures deserve. Under such circumstances, small minorities will not be able to enjoy a thorough set of publicly provided institutions necessary for the preservation and flourishing of their cultures. This would not be fair since it would unfairly burden the rest of the population into fulfilling this task. On the other hand, the preferences of members of minority cultures would not be disregarded. If, for example, the funds to be spent on the cultural activities of a national minority in a given region are insufficient for a primary school to be opened because too few individuals support the idea, there could be a possibility for opening a class within the premises of a "regular" school for pupils from that minority, where teaching would be done in the minority language. If, due to low interest from parents of minority cultures, this also proved unviable, then another option would be to provide education in the official language, but to teach the language of the minority in a special class. The decision whether to open a school, or a class for minority students, is made according to the result of the survey where the preferences of the members of the minority are taken into account. It is important to underline that the preferences of minority members for cultural provisions are taken as important in the context of the preferences of the whole citizenry: they are treated as having an equal value to those of other citizens. This way the process of deciding which activities are to be supported is fair because it equally respects the choices of all citizens.

Most importantly, this scheme of deciding the adequate level of support for minority cultures suits Dworkin's own egalitarian theory of distribution of resources. In Dworkin's view, justice requires that the claims that people are entitled to make on behalf of others should be receptive not only to the benefits expected on the part of the claimants, but to the burdens these claims place on the other citizens. These burdens are measured by the opportunity costs of the resources devoted to meeting them, which are a function of the preferences of others for the same resources (Dworkin 1981). In that sense, we can understand how the preferences of a few individuals from a minority culture for publicly provided education in their native language can not justifiably burden the rest of the population with no such preferences. For Dworkin treating people as equals requires that

each be permitted to use, for the projects to which he devotes his life, no more than an equal share of the resources available for all, and we can not compute how much any person has consumed...without taking into account the resources he has contributed as well as those he has taken from the economy (Dworkin 1985a: 206).

Alternatively put, “equality of resources aims that each person have an equal share of resources measured by the cost if the choices he makes, reflecting his own plans and preferences, to the plans and projects of others” (Dworkin 1987: 27). Neutrality is secured because no collective judgements are made about the importance or worth of different life projects and conceptions of the good. Dworkin’s neutrality does not guarantee that any kind of life somebody might want will be available to him/her, but his concept of the equality of resources allows “each persons’ social requirements—the social setting he claims he needs in order successfully to pursue his chosen way of life—to be tested by asking how far these requirements can be satisfied within an egalitarian structure that measures cost to others” (Dworkin 1987: 31). Therefore, the proposed scheme well corresponds to Dworkin’s postulate that the value of a bundle of external resources should be determined by the price it would obtain in a perfectly competitive market if everyone could bid for it and all enjoyed the same monetary assets, since shares of the educational budget are equally distributed to all the citizens. In view of that, the scheme proposed here harmonizes with Dworkin’s statement that we are responsible for our plans and for our attachments and hence:

We are free to make such decisions [about our attachments] with respect to the resources that are properly assigned to us in the first instance, though not, of course, to dispose in this way of resources that have been assigned, or rather are properly assignable, to others. Equality enters our plans by teaching us what is available to us, to deploy in accordance with our attachments and other concerns (Dworkin 1983: 31).

How would the system work in practice in relation to specific issues?

Yael Tamir proposes a noteworthy scheme whereby all the citizens are bestowed cultural vouchers with which individuals use to support cultural practices of their own choice (Tamir, 1993: 54-5). However, Tamir holds that in a society in which there is a minority X of several families, then “if we wish to ensure that all cultural choices enjoy an equal chances, we may wish to supplement the funds granted to members of the X community.” (Tamir 1993: 55) This allocates a greater share of the resources available to specific individuals, thereby contradicting the liberal egalitarian premises as postulated by Dworkin. Then how are we to judge when certain claims by individuals from minorities are possible and should be implemented? Obviously, the government or the state authorities would need to gather evidence of interest from a number of such individuals for a particular policy. Furthermore, the fact that a variety of cultural practices require a minimal number of partakers limits the scope for this practice to be implemented. For that reason,

when a cultural practice can not be followed due to a lack of participants, it can not be claimed that the right to culture of a particular individual interested in practicing it has been violated, unless it can be proven that deliberate obstacles were placed in the way of publicizing an event, or in the attempts to convince individuals to participate, or that individuals were intimidated or prevented from participating (Levy 1997: 55).

Therefore, minority individuals should be able to provide evidence that there are an adequate number of members of their group interested in participating in a given cultural practice so that the state aids them (cf. Raz 1998: 198, Merle 1998: 260).

For example, only if sufficient number of children from a minority culture wants to enrol in a high school that uses the minority language as language of

instruction the state should provide financial assistance to this school. If the number of students interested in studying in their native tongue is minimal then there are no basis for demanding financial support from the state, for a class of say only five or six pupils would not be operational nor financially viable. Similarly, minorities that are, from an organizational aspect, difficult to help in preserving their minority culture will also have to settle for less than full-blown cultural rights, even if they are greater in numbers. (cf. Bader 1997: 792) What I have in mind is a numerically strong but geographically dispersed minority.

Let us discuss the question of official language(s) at the national and local level. Obviously, a 'perfect' solution would promote all languages spoken on a given territory to official status. Surely, however, it is impossible to have all languages as official, for it is unimaginable for all citizens to be fluent in several different idioms. Problems arise not only in everyday life, but also on the national level. A state in which a number of languages are official will have difficulties engaging in the democratic process. In which language will state organs communicate to each other? How will the public understand the clerks, or parliamentary deputies even? Even if one could imagine a high-tech state which could provide parliamentary interpreters and a system of automatic media translation of deputies' speeches for the public, so that the state could claim that the process of political deliberation is unhampered by official multilingualism, conducting any official business in such a state would not only be very impractical but also very costly. Or, as Will Kymlicka and Christian Straehle have put it "in principle, one could imagine extensive translation facilities amongst people of different languages, but this can quickly become prohibitively expensive and cumbersome" (Kymlicka and Straehle 1999: 70). Therefore, realistically speaking, it seems that the liberal democratic state can not completely reflect the wishes of all linguistic groups in a given country as far as the policy of official languages is concerned.

We might assume that the democratic wish of the majority of the population would be for the most widely spoken language(s) to become official. This could again be determined via a public survey of the citizens' preferences. It would be important that citizens express their predisposition, since there would not necessarily be a link between the native tongue of a person and his/her idea about which language should be selected as official either nationally or locally. For various reasons some persons belonging to the minority might think that it is better that the language of the majority population should be official or vice versa. At the local level, persons who belong to an ethnic group that is a majority at the national level, but a small minority in a particular region, might believe that justice requires that the language most spoken in the region is to become official.

Another practical solution for the needs of members of the minority cultures concerns the question of individual choice. The issue we are discussing is the question of language use in the sphere of education. According to our scheme, language policies of schools should reflect the choices of parents about which language(s) the classes are held in, and/or alternatively which language is taught as first language of the children. The choices of parents are considered in relation to two issues: firstly, the language used as the language of instruction, and secondly, the language taught as their children's first language, regardless of whether or not the same language is used as a language of instruction in all classes. This policy leaves much more room for parents to choose than a policy that directly relates one's ethnicity to either the language taught as native to the children or to the school's language of instruction.

The more simplistic formula was exactly the recommendation of the Organization for Security and Cooperation in Europe (Conference on Security and Cooperation in Europe until 1995) in the 19<sup>th</sup> July, 1991, Report of the CSCE Meeting of Experts on National Minorities which specified that:

minorities should receive from the state budget an amount that would not be less than the contribution of minority members to the budget for the same purpose. In other words, sums allocated from the state budget to minority schools out of the total school budget should be at least as large as the minority taxpayers' contribution to the same budget (Varady 1997: 49fn).

This recommendation simply assumes that members of minority cultures will prefer education for their children in minority schools, but this might or might not be the case. Although well intentioned, this recommendation failed to take into account an important point in liberal theory, namely the value of autonomy: the individual freedom to decide on the best conception of good in life, and accordingly, on the preferred native language or language of instruction taught in schools for children of minority members.

Let us take a country such as Estonia as an example to see what kinds of issues are involved. Estonia is a multiethnic country; a significant proportion of its population belongs to a national minority. According to the census, the population of Estonia is divided between the following ethnic groups: Estonians 68%, Russians 26%, Ukrainians 2 %, Belorussians 1%, and others 3%, individuals belonging to various different ethnic groups (*2000 Rahva ja Eluruumide Loendus-Population and Housing Census II*: 14). It is important to note that a significant number of Ukrainians and Belorussians speak Russian as a mother tongue. Some Estonians, as well as individuals that belong to other ethnic groups too, speak Russian as a native language. According to the census, 17,985 ( 2%) ethnic Estonians, speak Russian as their mother tongue (*2000 Rahva ja Eluruumide Loendus- Population and Housing Census II*: 222). For Belorussians and Ukrainians this number is much higher. Only 19 % of Belorussians use Belorussian, and 26 % of Ukrainians use Ukrainian as their mother tongues, respectively. Most of them in fact use Russian as their mother tongue. (Calculations based on census results) On the other hand, a number of Russians, Ukrainians and Belorussians, as well as persons belonging to other ethnic groups speak Estonian as their first language. Thus, for example, 1.4 % of ethnic Russians (or 5,062 persons) speak Estonian as their mother tongue. For specific historic-political reasons, Russians make the absolute majority of the populations of a number of towns in the Northeast of Estonia, as well as almost half of the population of the capital Tallinn. In a number of other towns, Russians make a significant minority.

Taking Estonia as an example, a school might offer instruction in Estonian, in Russian, or in both simultaneously. However, in some mixed regions, cities, or counties, there would be parents who might decide that while it would be important for their children to retain the 'mother tongue', and would therefore want this language to be taught to their young ones, they might decide for economic or other reasons that it would be the best for their children to be taught all other classes in the majority language of the wider community. A Russian family from Tartu might decide, for example, that for their children the best chances for a successful life and 'integration' within the Estonian state and society would be if they had classes taught in Estonian, while preserving the option of learning Russian as the first language of the children. Persons from mixed marriages might also make this kind of decision.

Similarly, a member of small community in Estonia, say a Latvian, might be delighted by the possibility of his/her child being able to learn Latvian in school, provided that his/her child lives in a neighborhood where there are enough children who would study Latvian in that school for classes in this language, but would for obvious reasons not want his/her child's education to take place entirely in Latvian. The USA provides another example concerning language policies. The Office of Civil Rights decreed after a case that has appeared at the US Supreme Court that school districts with more than twenty students whose native language was not English must be put in bilingual programmes, regardless of the adequacy of their English. (cf. Barry, 2001:299). Obviously here, the choice of the parents were not taken into account, and ethnic origins automatically determined which language(s) would be used in schools.

Culture is a "living matter" constantly changing and reshaping itself. One can not rule out the possibility that a particular community would gradually alter its native or mother language. As long as this is freely taken choice by the members of the community, it is a legitimate and fair choice. Considering the intricate situation described above, a simple questionnaire asking parents to select the language in which their children should be instructed would be insufficient to determine the complex choices of parents. Rather, the policy should be something along the following. There is a general/most used language in the school. Parents should make three decisions: which is the first language taught to their children, the language of instruction, as well as which foreign language their children will study (English, German, French, Spanish, Russian, Estonian, and so on.) A survey thus, asks the parents two questions:

Which language you would like your children to learn as a first language?

On the basis of the results of the survey, a general/most used language of the school is chosen. This shows which language a majority of parents consider most important for the development of their children. This language would be taught to all children irrespectively of the choices they make in the question 2. If the language selected as the general/most used language is a minority language in a given country taken as a whole, but a majority language in the region where our school is located all the children would study both languages. The children from the majority nationality would learn the other language because theirs is a minority one in the region they live in, while the children of the minority nationality, would still be obliged to study the official language of the state in which they live.

Children whose parents choose a language other than the general language would be provided with classes in the language of their choice. This is of course possible only if certain numerical requirements are met: it does not make much sense to have a class in Greek with only one Greek student. However, there is no direct link between ethnicity and language, as the emphasis on parental choice in choosing the language of instruction for children. For example, some Estonian parents with a mixed origin say, half-Estonian and half-Armenian, may prefer that their children learn Armenian as their first language. This would be a legitimate choice, as long as the child in question has some knowledge of Armenian and speaks it at home.

Obviously, teaching children a language their parents do not speak would amount to teaching them a foreign language. Thereupon, the knowledge of the child's assumed first language must undergo some kind of testing to ascertain whether the language preferences of the parents fit the reality. For example, if Estonian parents choose to have their children education in Urdu or French as their first language, through testing they would have to show that indeed their children

have acquired the knowledge of this language, and that the children need to learn the language so as to communicate with their parents or relatives, or to preserve the language as such. This is an important point, because it distinguishes a situation where there is a genuine need for the teaching of a given language because it is the language that parents actually speak and would like to pass it to their children, and a situation where parents make calculated and opportunistic choices and want to bequest their children a linguistic asset in the form of a foreign language, masked as being their native tongue.

If we imagine the practical example that illustrates the dilemmas of liberal nation-building with the parents of the three children we can draw some parallels to our case. Suppose that after you have given oranges to the three of your children *and* chocolate to Vesna because this was her usual choice for snacks, Aleksandra claims that while she usually eats oranges for snacks, today she felt more like an ice-cream than orange. She understands that she had to eat oranges in order to get better, but since her choice for snacks today was an ice-cream she asks you to get her one. Naturally, the third daughter, Biljana, would immediately put a similar claim, asking for, let us say, a banana. What are we to do in such a situation? Although it would seem fair that both Aleksandra and Biljana get ice-cream and bananas we feel that their choices were somehow faked and therefore undeserving. The way out of the troubling situation would be to ask before handling them the oranges needed to improve their health what kind of snacks they want to have today. In such case, Aleksandra's and Biljana's later claims would not be justified, only Vesna's would be. In our situation, we can not establish what the 'real' choices of parents concerning the teaching of native tongue to their children will be. The test of knowledge of the native language distinguishes cases of need and caprice, for we can safely assume that children who have very limited or no knowledge of a given language do not speak it as their native tongue.

Coming back to the survey, the second question would ask the parents which language they would like their children to use as a language of instruction? If the language chosen at 2, is not the general/most used language, parents would be asked whether they want their children to be instructed in the language of their choice at (1) or in the general/most used language. All classes would to be held either in the first language of the child, if different from the general/most used language, or in the general/most used language. Some combination of the two is also possible option. For example, while most of the classes would be taught in the general/most used language, some that require less verbal ability, for example, physical education, music, or arts, could be taught in the language(s) not chosen as general/most used. This leaves the choice open to parents with children that do not speak the general/most used language to as to which language the classes will be held. Some might decide to forego their 'native language' and have classes in the general/most used language, while others would stick more to their tradition. A member of the Russian minority, for example, might decide that it is important for her/his child to learn the Russian language, but that it is more valuable to have all classes in the most used/general language, presumably Estonian, than in Russian. The third question would be phrased something like: 'which foreign language would you like your children to be taught in?' This option will leave the parents who would like their children to learn Urdu or French the choice to do so. Some Estonian parents where Estonian is the primary/most common language might decide that their children need to learn Russian as a foreign language, and so on.

From the discussion presented above we can conclude several things. Clearly, liberal equality necessitates equal concern for all citizens in the polity. If the

state, for some reasons, advantages a distinct group of individuals, then it is obliged to equally support the other citizens in the polity in their life pursuits. For example, if the government of a given state decides to give all right-handed persons public funds to organize cultural or sport events, then the left-handed persons might feel discriminated and asked to be treated equally. These persons would not be treated equally with respect to the right-handed individuals, because the government had for unspecified reasons denied them the support it offers to the other section of the population. In this situation, if the state wants to follow liberal principles, it would either, revoke such a governmental provision or alternatively, grant the left-handed part of the population public funds for organizing of their cultural and sport events. In the process of nation-building, the state inevitably puts those persons who speak the majority language and are based in the majority culture into an advantageous position. This would not be a problem if it did not conflict with the life plans of the persons belonging to the minority culture. Since their language and culture are not supported by the state policies, they might feel wronged. If the life plans of the individuals of the minority cultures aim at learning their own mother tongue and preserving their own national culture, then the state is not treating them equally with respect to the majority population, since it does not promote the conception of the good life of the latter but of the former group of citizens. Public funds allocated to the nation-building process of the majority put members of the national minorities in a 'non-equal' position.

For this reason the liberal state needs to treat all the life plans of its citizens equally. Nevertheless, to expect the modern state to provide public funding for all members of the national minorities to conduct essentially the same nation-building process as the majority is not realistic. Not all minorities have the numerical strength to engage in a nation-building program, nor can the contemporary state afford this. Practically speaking, then, even though members of national minorities are entitled to an equal treatment by the state in the process of nation-building as the majority population, they should settle for some realistic fulfilment of their needs. Thus, numerically small or widely dispersed national minorities can not insist that the state provides them with full education, cinemas, theatres, opera, and media programs in their own language. Equal concern for all citizens of the state necessitates that individuals' preferences concerning public support of cultural practices are given equal weight. The scheme we have proposed serves this purpose since it relates the overall preferences of the citizens with the amount of support the state gives to different cultural institutions. The state distribution of public funds under such circumstances will treat the individuals and their choices equally, as each preference will be given equal material value.

## CHAPTER 5

### **Liberal Nation-building and Minorities: Types of Demands for Cultural Rights**

The state which treats every citizen as an equal cannot be a nation state: it must be a co-nation state. It cannot be identified with a single favoured nation but must consider the political community of all the ethnic groups living on its territory as constituting it. It should recognize all of their cultures and all of their traditions as its own. It should notice that the various ethnic groups contend with unequal initial chances for official recognition and a share of public authority, and it should offer particular assistance to the members of disadvantaged groups in approaching a position of equality. The privileges which are meant to countervail the initial disadvantages are inevitably lasting (since the inequality of the relationships of force between the state-forming groups are also lasting) and they might need to be expressed as rights. (Kis 1995: 224-225).

This chapter begins with a discussion of requests for exemptions from laws penalizing or burdening cultural practices. I will closely look at various demands members of minorities press upon the central authorities pertaining to the nation-building process in relation to the liberal egalitarian principles discussed in this publication. I will analyze which of the diverse demands have a case within egalitarian liberal theory and can be employed in the process of liberal nation-building. The demands I will carefully analyze in the later sections of this publication are taken from a useful scheme for classifying cultural rights developed by Jacob Levy. These include exemptions from laws that penalize or burden cultural practices, assistance to do things the majority can do unassisted, external rules restricting non-members' liberty in order to protect minority culture, internal rules for member's conduct that are enforced by ostracism and excommunication, incorporation and enforcement of traditional or religious legal codes within the dominant legal system, and symbolic recognition of the worth, status, or existence of various groups within the larger state community (Levy 1997). I have not taken into account the issues concerning demands for secession and/or national self-determination because they deal with the question of the integrity of the state rather than with support for minority cultures.

#### **12. Demands for Minority Rights I- Exemptions from Laws that Penalize or Burden Cultural Practices**

What kind of approach should the liberal state take regarding what has been labelled exemption rights? As Levy explains "exemption rights are individually exercised negative liberties granted to members of a religious or cultural group whose practices are such that a generally and ostensibly neutral law would be a distinctive burden on them" (Levy 1997: 25). These rights are "typically justified with arguments highlighting freedom for conscience and religion, and the unfair burden placed on those whose religious obligations differ from the majority's" (Kymlicka and

Norman 2000: 25). One such right would, for example, be the legal exemption granted to Muslim or Jewish shopkeepers in Great Britain with respect to Sunday-closing laws. This and other 'exemptions from laws' are well placed within the liberal framework if they are based on the liberal principles of equality and freedom for all citizens.

How can 'exemptions from laws' be justified from a liberal nation-building perspective? Let us consider the case of deciding the non-working days in the week. Any nation-building process must take into consideration which days in the week are to be free. In fact, in most countries in the world, this question has already been settled: demands by members of ethnocultural minorities make states reconsider the issue. If a decision about which day in the week should be free from work reflects the cultural norms of the majority population, it is necessarily going to affect individuals whose religion, cultural practice, or personal beliefs, differ from the choice made for the ordained day for rest. As a consequence, these individuals will be put in a disadvantaged position vis-à-vis the rest of the population. While the majority of the population would enjoying free day exactly when they would like to, other persons would have to close their companies and shops on a day they see as suitable for business. Likewise, state holidays based on religious celebrations would inevitably affect the personal choices of those citizens who do not observe them. Such circumstances can be avoided, for example, if the state decides that public holidays are not to be based on religious feasts which might be 'the right dates' for certain segments of the population but 'wrong' for other persons. Granted the importance of 'holy days' for the lives of the people, the state could grant the right to celebrate religious holidays at a time they deem fit for all individuals. Every citizen would be given a certain amount of free days in the year which he/she would be able to use for personal, religious, or other 'holy days' by clearly announcing in advance his/her choices to the employer. The state could still have one national day, 'day of the republic', 'independence day', or other similar label, which would commemorate the birth of the country, and would be a non-working day for all citizens regardless of their religious, national or other orientation. What is important is that state holidays based on religious dates must be optional, and accordingly, would not affect the personal freedom of individuals. Under such circumstances we would have a liberal form of nation-building, since all the preference of the citizens would be counted equally.

The questions about which days are to be free days for the public and/or which days are to be considered as public holidays respecting religious feasts are highly important for the modern world we live in. Almost all countries around the globe are multiethnic in nature. Some, if not most of them, are also multiconfessional. To reconcile different beliefs and cultural norms within a liberal state can be very difficult in some cases. Sometimes, despite the best intentions, the laws adopted will fail to treat all citizens equally. Some countries will offer better solutions to the policy dilemma, than others. Let us consider two examples concerning the issue of choosing and regulating the right to public holidays, one taken from Macedonia, the other from the UK.

The first example is the Macedonian Constitutional Court case of Vasko Kostevski, an electrical engineer employed in the public enterprise REK Bitola. According to article 4 of the *Zakon za Praznici na Republika Makedonija* (Law on Holidays of the Republic of Macedonia) published in *Sluzhben Vesnik na Republika Makedonija* 21/98, Macedonia has the following public holidays: the first day of Christmas, and the second day of Easter for Christians, the first day of Ramadan Bajram and Kurban Bajram for the Muslims, and the first day of Yom Kippur for

Jews. Thus, Christians are to observe Easter and Christmas as public holidays, while the members of the Islamic religious communities are allowed to celebrate their own festivities, for which they too are excused from work. Kostevski was a Macedonian, who are usually Orthodox Christians, but claimed to be a convert to Islam. At the times of the Christian religious festivities Kostevski and his co-workers took a day off. However, he additionally was absent from work when the affiliates of the Islamic faith, celebrated their holydays, Kurban - Bajram and Ramazan – Bajram. Failing to come to work on this later occasion, the employer penalized Kostevski by decreasing his salary fifteen percent for a period of six months. Subsequently, Kostevski took his employer to court, alleging that his freedom for religion had been violated. MIA, the Macedonian Information Agency, reported on 27<sup>th</sup> of April 2000 that the Constitutional Court held a public debate at Kostevski's request, on the legal protection of his freedom for religion.

The city and the regional court in Bitola disagreed with him, maintaining that the right to religion is not only a personal right to the extent that Kostevski could celebrate both the religious holidays of the Islamic and the Orthodox faith. The Constitutional Court, therefore, was to rule whether the right to religion and to belong to a religious community were to be decided solely by individual citizens or whether additional, 'objective' facts could be also taken into account. As MIA reported, Vasko Kostevski, in his reasoning before the court, argued that "although he is Macedonian by nationality [generally of Orthodox religion], he chose the Islamic faith, as a right guaranteed by the Constitution of the republic, and the Law of Religious Communities", and that "although he, like everyone else, did not come to work at the time of Easter, and Christmas, he did not celebrate Orthodox holidays" (MIA 2000).

In the deliberations of the Kostevski case, attention-grabbing opinions were held by a variety of public figures. Thus, MIA reported that the Ombudsman of the country, Branko Naumovski, thought that the Constitutional Court should determine whether the plaintiff had continuously belonged to the Islamic religious community, how long he had been a member, and in the way Kostevski manifested his religious affiliation. Naumovski added that it would be difficult to prove an affiliation to a religious community. According to the president of the State Commission for Relations with the Religious Communities, Gjorgji Naumov, in this case the Constitutional Court should bring into play the results of the Census of the Population in 1994 as evidence as to whether Kostevski had declared himself a member of the Islamic faith or not. On 14<sup>th</sup> July 2000 the daily Nova Makedonija reported that the Constitutional Court had turned down the request of Vasko Kostevski for legal protection against discrimination on the basis of religious affiliation.

Was the decision by the Constitutional Court correct? Is their interpretation of the law itself sufficient to regulate public holidays acceptable within a liberal egalitarian theory? The case of Kostevski is a good example of how the state failed to follow liberal values in this area. Macedonian lawmakers have been cautious in accommodating the interests of religious communities present in the country. Regrettably, the legislators were not careful in drafting the law: it does not treat all citizens as equal and interferes with the personal choices of the citizens concerning religion. As a result, both these matters affect the liberal character of the law.

The first problem with the Law on Holidays of the Republic of Macedonia is that it assumes a religious affiliation for the citizens of the country: as far as the legal norm is concerned, all Macedonian citizens are supposedly Christian, Muslim or Jewish. There is a relation between the person's religious affiliation and the free days he/she should enjoy according to the law. If a person is Muslim he/she may

observe the religious holidays of the Islamic faith, but is supposed to work during the festivities of the Christians and Jews, and Christians work during Muslim and Jewish holidays and so on. The problematic part of this legal provision is that a person has to be clearly identified to given religion to enjoy free days during the holidays of that religious community. If, as in the case of Kostevski, a person who is supposed to be of one faith declares that he is a member of another religion, then there is a potential for a legal disagreement. How is the employer supposed to know the religious affiliation of his/her employees? Some might be willing to report this personal marker, but others might want to keep this information private. The problem is accentuated by the fact that in practice in areas traditionally populated almost exclusively by Orthodox Macedonians many companies and firms stop working during the Christian holidays, assuming that all employees will. In a situation like this, Kostevski found a loophole in the system, claiming that since he belonged to the Islamic religious community he had a right to be free from work on the days of Kurban Bajram and Ramadan Bajram as well. The employer and, I assume, the Constitutional Court argued against Kostevski on the grounds that he can not celebrate the religious festivities of both the Christians and the Muslims and miss work on both occasions. Although this is in principle a correct decision, since it does not allow a citizen to be put in an unequal position against the rest of the population by being able to enjoy two more free days than the others, it is difficult to support the reasoning of the court in the light of the fact that, as Kostevski himself argued, 'although he, like everyone else did not come to work at the time of Easter, and Christmas, he did not celebrate Orthodox holidays.' That the enterprise was not working during the times of the Orthodox holidays was not Kostevski's problem. His legal right to celebrate the holidays of the Islamic community he claims to belong to should have been upheld.

The underlying principle of the law which divides the population into religious segments, each allocated days free from work to observe their community's holidays, faces a problem when a person unexpectedly claims to be a member of an 'other' religious community or if a person decides to change his/her religious affiliation. This law assumes that religious feeling is long lasting and based on the traditional spiritual communities in the country. What, for example, if a citizen of Macedonia declares himself a Buddhist? How is he supposed to enjoy his/her religious feasts if the law does not mention persons with this religious membership? Maybe he is to have free days when the other communities do. But if so, then at the time of which of the three communities mentioned in the law? Additionally, the law conflicts with the liberal principle of equality of all citizens, since the adherents to Judaism are allowed only one free day during their religious festivities against the two free days Christians and Muslims. Finally, atheists are not mentioned in the law. If the law cares to treat all citizens equally then atheists should be allowed two free-days. But at which time of the year could they exercise this right?

A better formulation of the law would perhaps be to stipulate that all citizens of the country would be allowed a fixed number of free days for exercising their religious or other celebrations. In order to avoid chaos and production and efficiency losses, the worker would be required to inform the employer in advance when he/she is going to exercise this right so that the necessary contingency arrangement can be made. Obviously in certain professions exercising this right could be additionally burdened by unforeseen reasons such as medical emergencies, but in principle such a law would better suited to a liberal regime than the one currently in force in Macedonia.

Another interesting example regarding the issue of laws on public holidays comes from Britain. The decision of the British courts concerned the faith of Ahmad, a devout Muslim. This very complex case closely resembles the one of Kostevski. Ahmad was employed as a full-time school teacher by the Inner London Education Authority (ILEA). He asked to be exempted from work during Friday afternoons so as to be able to attend the mosque prayers. ILEA, however, "advised the head-teachers of the schools at which Mr.Ahmad taught that he should not be given permission to absent himself in this way" (Jones 1994: 24). Since Mr.Ahmad continued to attend the Friday prayers, ILEA demanded that he relinquish his position as a full-time employee and offered him a position as a part-time teacher, an offer he found unacceptable. Mr.Ahmed appealed to the industrial tribunal for unfair dismissal, a claim which was dismissed and subsequently confirmed by the Employment Appeal Tribunal, the Court of Appeals, and the European Commission.

However, were these decisions correct from a liberal perspective whereby all citizens are to be treated as equals under the law? Not so, argued judge Scarman in the Court of Appeal, who rightly pointed out that

the established five-day working week created no problem for Jewish teachers in relation to Saturdays, or for Christian teachers in relation to Sundays. But a rigid adherence to the five-day working week would mean that a devout Muslim, who took seriously his duty to attend Friday prayers, could never become a full-time teacher. Moreover, he rightly argued that the educational system should be sufficiently flexible to accommodate the beliefs and observances of all religions, because if it did not do so, then Mr. Ahmad and other Muslims could properly complain of discrimination. (Jones 1994: 47, 50)

Why does the opinion of judge Scarman coincide with the liberal egalitarian theoretical framework? Liberal theory's emphasis on treating all citizens as equals does not well correspond to the religious needs of all citizens within a working week giving Saturday and Sunday as work-free days. Consider the case of Ahmad. His predicament was a consequence of the particular set of days that children are required to attend school in the UK. His ability to pray on the day Islam requires is affected by the law which says that he should report to work on Fridays. At the same time, a hypothetical colleague from work, Bob, a member of the Church of England, does not have the same problem since the day he is supposed to pray is a non-working day. Obviously, the law which sets Sunday, or even Saturday, as the solely non-working day it affects unequally the choices of Ahmad and Bob. A liberal state that is serious in treating its citizens as equals and being neutral between their preferences as far as their conception of the good life, religion, and life styles is concerned, should take into consideration the unequal positions in which Ahmad and Bob find themselves due to the present law.

We could argue that the reasons for adopting the law were justificatory neutral, that they were independent of any conception of the good life, that they only followed the logic which says that human beings need a day of rest for they can not go on working everyday in the year. But the reasons for having the five-day working week designed in this way were made upon considerations that did not include members of the Muslim faith. The reasons in favour of deciding that there needed to be a day(s) of rest for all citizens in the country were and are independent of any conception of the good life, but clearly the particular choice of days is not. In other words, there are convincing reasons to believe that when the British lawmakers decided to make the working week be from Monday to Friday they acted upon

considerations and judgements about which days the members of the major religion(s) worship. They did not want the days of religious worship to conflict with the working days of the majority ethnic group and devised the working week accordingly, acting in violation of justificatory neutrality. In fact, the same rationale can be applied to the case of Sunday closing laws. While on the one hand, one could argue that there are good independent reasons to have one day in the week for leisure of people, the choice of the day would have to be thoroughly considered. If it is Sunday, then it is clearly chosen because this is the day of worship for many Christians and therefore the reasons for choosing it would not be independent. Instead, a better solution would be to allow a day of leisure, or a free from work day, but to leave the decision to the individual citizens about when is one to have a free from work day.

Let us consider a different case to see how true this is. Let us imagine that a government is supposed to build a new school in a recently developed neighbourhood secluded from other parts of the city by a natural barrier, let us say a river. Assume further that the houses and the apartment blocks in the neighbourhood were built in concentric circles, so that the distance from any given house to the centre of the neighbourhood is approximately equal. Now, a decision by the central authorities simply to build a school in this neighbourhood would be reached on neutral grounds. The officials from the ministry of education could, based on the number of children in this neighbourhood and the demands of their parents, suggest that the government build a school in this area. The reasons why the government would consent to this idea would be “good independent reasons”- there is a neighbourhood with a number of children sufficient for opening a school and to make these children travel to a school in another neighbourhood could be quite burdensome.

However, let us now consider the question of the location of the new school. If we assume that the dwellings in the neighbourhood we are discussing are so dispersed that they look as if they make a circle, then any other decision except to build the school in the centre of this imaginary circle would be partial and biased in favour of the interests of a particular group of citizens. If, for example, we decide to build the school in the extreme upper part of the circle, then obviously we would make it easier and less time consuming for the children of parents who live in that part of the neighbourhood to travel to school. Such a decision would not be neutral for it would treat the preferences of the parties engaged differently. However, we could accept that the school should be built in the extreme upper or lower part of the circle if there were reasons not to choose the central location. For example, if there was no suitable land in the central parts of the imaginary circle of our neighbourhood to build the school, or if the government could only purchase land to build the school in the upper parts of the circle, the central acres being the private property of individuals unwilling to sell it, or if the government could not construct a school in the central areas due to environmental concerns, and so on. In other words, we can pass decisions that suit some people’s preferences better and yet claim that the government has upheld neutrality only in instances when equal consideration of different preferences or conceptions of the good is not possible for various reasons outside the government’s control.

Therefore, we have two ways to defend the British settlement about which days are to be free from work. On the one hand, we could presuppose that at the time when the decision about the working week was reached, consideration was given to all conceptions of the good present. Assuming that Muslims were not present in Britain at this initial time, but Jews and Christians were, then the decision

about the Monday to Friday working week would have been plausible been made on justificatory neutralist considerations. On the other hand, we could also stipulate that it was indeed impossible to take equal account of the interests of Muslims, Christians, and Jews on the matter, so that the discrimination suffered by the Muslims is not one of deliberate intent. In other words, we could argue that there was no way reaching the decision about the non-working days without affecting someone's conception of the good. That the Muslims were affected in this case is just a historic contingency. Thus for example, Brighthouse (1999: 377) states that "when a policy has publicly demonstrated negative effects on a particular conception of the good for some lengthy period of time it is sometimes reasonable for those who are disadvantaged by it to feel devalued even when in fact the justification of the policy was neutral." Why it is "sometimes reasonable" rather than simply "reasonable" is not clear, but the point is well taken.

However, we could easily assume that had there been a Muslim delegate when the decision was made about which days should count as non-working, the decision would not have been reached by a consensus (although arguably given the overall majority of other religious believers it would have still been reached.) In fact, if we take peoples' choices about religious affiliation equally seriously then we could argue that people in the Rawlsian 'original position' would not want that the day of worship to be a working day. If we are to count people's preferences for religious worship with equal value then we cannot make working days conflict with religious affections. In fact, until some time ago, in the United Kingdom they did not conflict.

However, Britain and many other countries have undergone dramatic demographic changes in recent decades and should reflect these changes by changing their legal systems. If the UK was traditionally a Christian country with a small minority of Jews, one could understand that the laws on non-working days did not treat anyone's interests unequally. But now that Britain is fairly multicultural, and about two percent of the population is Muslim, to keep this law would put Muslims and perhaps other religions in an unequal position towards the rest of the population. A liberal approach to respecting of the rights of citizens equally would be sensitive to the fact that Britain has ceased to be a solely Judeo-Christian country. One could argue that when this law was adopted the decision the "normal" situation was that there were only Jews and Christians living in the country. Similarly one could argue that the "normal" practice was that man and wife entered into a communal relationship via marriage and that the law reflect this practice. However, if nowadays, there are sufficient numbers of people willing to enter into a marriage with a member of the same sex, there are no reasons why the marriage laws could not be amended and become "gender ignoring." The interests of homosexuals should not be ignored on the basis of an old law.

The decision to rule against Mr.Ahmad's objection, made by a proclaimed liberal state, does not accord with the postulates of nation-building process based on liberal egalitarian theory. In fact, a better solution would be to allow the citizens to choose when they would like to have theirs free days. This would mean that Muslims could stay off work on Friday, Jews on Saturday, and Christians on Sunday. Consequently, the 'traditional' working week would be altered, but who says that this practice is unchangeable? Alternatively, a state could keep the Monday to Friday as the working week, but allow individuals belonging to the Muslim faith to practice their religion on Fridays, and be absent from work, provided that there is a provision whereby they either make up their absence on Friday by working more during the other working days, or by having less free days allocated for the mandatory yearly holidays. In this way their freedom to practice their religious customs would not be

restricted, while all employees would have the obligation to work the same number of hours. Every person's interests and obligations would count equally.

Other claims for 'exemption from laws' are less compatible with the principle of equality. For example, demands by religious parents that their children are exempted from the institutions and curricula of the public education system are often impossible to gratify without affecting the rights of the children. Thus, in Norway for years the authorities had informally allowed Roma parents to take their children out of school at an early age because the public schools were supposedly in conflict with their culture (Eriksen 1993: 143). As a result of this policy, many Roma children remained illiterate predictably a young Rom accused the state of being responsible for his illiteracy. Similarly, in Great Britain the law forbidding a parent from preventing his/her children from regularly attending school, was modified in 1944, with the Education Act, so as to exempt Roma children from this provision. Roma children, due to the nature of the Roma way of life, were obliged only to attend half the normal school sessions. As in Norway, British Roma children were denied the sort of education "which would fit them to make a rational choice of lifestyle as adults" (Poulter 1987: 600-601). Allowing 'exemptions from laws' that are contrary to general educational standards affects the abilities of certain citizens and are to be avoided if the state wants to uphold the principles of equality and freedom. Whereas the majority of the population acquire the necessary tools for adapting to the needs of the modern life, such as literacy, Roma children who are taken out of schools at an early age do not, and are therefore put in a disadvantaged position to pursue a 'good life' in the society compared to the rest of the citizens.

What about demands by different persons, cultural institutions or political parties, that the state respect the diversity of views and values within the members of the minorities by adopting laws exclusively for specific segments of the population? A liberal polity should give equal consideration to such demands. The state should respect the diversity of views and values of minorities when adopting laws exclusively for specific segments of the population. However, sometimes demands are made that these laws, for example concerning the Muslims in a given country, place citizens outside of the general legal system. This duality of the legal system, understood as an "exemption from the laws", can lead to unwanted consequences whereby individuals are not treated as being equal. Thus, for instance, in Mauritius up to 1987 allowed Muslims to settle domestic court matters according to Muslim law even when this conflicted with the common Mauritian law. Granted the male centred peculiarity of the law, Muslim women were for years against the law. Their rights and duties under the religious law were different then under the general, societal legal norms. These women argued in favour of laws that bound equally all citizens of the country regardless of their status, gender, religious or national inclinations. The general conclusion it should be clear that a state that respects the equality of its members must be careful in reviewing demands by religious or other minorities for legal exemptions.

### 13. Demands for Minority Rights II- State Assistance for Minorities

Liberal nation-building has a significant impact on multiethnic states. Justice in ethnically heterogeneous states requires that the state not be understood as a 'nation-state', a state that belongs to the citizens of one ethnic group, but as a polity that is shared by all citizens of the country. In fact, minorities often ask for state assistance for those things that the majority takes for granted. These are such provisions as public funding for schools, minority-language rights and so on. As we have argued in chapter two, state assistance for members of minorities who ask for support in areas of life where the members of the majority are automatically granted such backing is justified on the basis of equality between all citizens. In a liberal polity, all persons should be treated equally and when the state sustains the life options of the individuals from the majority population through the process of nation-building, it must also maintain the life choices of the persons from the minorities if it is going to treat all citizens equally. As we have argued, a liberal state is required to be receptive to demands from minority members for funding of schools in minority language, if it wants to treat all citizens equally. Moreover, a plural state is more legitimate if all its citizens and not only those of the majority, consider the territory of the state their own homeland, accept the legal system of the state and their institutions, and respect the insignia of the state as their own symbols. These are goods to be jointly shared with all of the other citizens. The political community of a multicultural country will be just if

it is formed from a union of ethnic groups living together. Its official symbols, holidays, its cultural goods handed down in school, and its historical remembrance will absorb something from the tradition of all the ethnic groups belonging to it, so that everyone can see the state is also theirs: likewise, everyone can see that the state is not their exclusive possession but is held jointly with the other ethnic groups forming it (Kis 1996: 237).

In principle a liberal state should take into consideration the needs of persons belonging to minorities that are for any given reasons seriously disadvantaged in comparison to the members of the majority. Under such state of affairs, universalistic liberal egalitarian policies aimed at eradicating individual deprivation might need to be modified. This is particularly cogent to remember when discussing the issue of 'affirmative action.' Systematically discriminated and thereby disadvantaged minorities, that have fewer resources and opportunities than the majority population, such as African-Americans in the USA, need(ed) special state assistance in overcoming this predicament and successfully integrating in the society. These measures are just even if they allow for preferential treatment of citizens. Afro-Americans have suffered discrimination in all important fields of social life, such as employment, education, housing, and so on. To treat them as equals in such a state of affairs will mean to treat them differently than the rest of the population. Policies offering preferential admission to educational institutions and jobs to blacks in the USA, Roma in Eastern Europe, Albanians in Macedonia, were/are consequently justifiable exercises. Such treatment of American blacks "does no injustice to white males ....since the former [they] have achieved their

superior qualifications through the underserved advantages of past discrimination” (Ingram 2000: 195).

The important question for achieving social justice is how long to administer ‘affirmative action’ without adjusting it to changeable circumstances. After a certain period of implementation, the inequalities vis-à-vis the privileged group of people would become ameliorated if not eradicated. Thus, “although it remains true that American blacks are on the average disadvantaged, there is now a flourishing black middle class, and it is their children who are the main beneficiaries of preferential admissions to the leading universities” (Barry 2001: 115). Consider also David Ingram’s, view that

affirmative action seems to benefit those who need it the least while not benefiting those who need it the most. It helps middle-class blacks who have not suffered profound educational deprivation (and who therefore have enough skills to advance beyond high school) but it seems to neglect poor blacks who have (Ingram 2000: 173).

Nowadays then, the situation of a section of the African-Americans should be of concern to liberal egalitarians. Although not with difficulties, the proposal that affirmative action policies are phased out in two stages, each lasting five years, the first of which would eliminate from coverage children of well off African-Americans, and the second children of any black parents except poor ones, is based on a sound judgement.

#### **14. Demands for Minority Rights III- External Rules Restricting ‘Non-Members’ Liberty in Order to Protect Members’ Culture**

The demands for ‘restricting external rules’ are typically quite controversial stipulations. When members of a cultural group, through their parties or other political representatives, ask the liberal democratic state for the right to limit the liberty of fellow citizens who are not members of their group, they usually justify such demands with the explanation that these rights protect fragile elements in the minority culture. Alternatively, this culture is often described as vital to the needs of the individuals from minority cultures for achieving good life and self-respect. The Quebec language laws which forbid Francophones and immigrants from sending their children to English-language schools while allowing Canadian Anglophones to do so, and ban the use of languages other than French on commercial signs within Quebec, are one of the most striking and thoroughly discussed example for such course of action. (cf. Joppke and Lukes, 1999: 12)

Such principles however can hardly fall within the liberal framework of organization of the state and a just nation-building process. The Quebec law, for example, does not take into account the fact that in this province there are people who are not native speakers of French, or that even within this segment of the population, there are persons are not so concerned about the vitality of the language so as to forbid others to use their own mother tongue on commercial signs or elsewhere. To promote one single language as official and to ban the usage of other languages against the will of the population is to unfairly promote one language over the other and to treat citizens unequally. For, who is to say that French is more meaningful and valuable than English, for instance? And why would the choice of a

French speaking merchant to use French on his/her advertisement signs be more valuable than the choice of the English speaking businessman to display his/her products on commercial signs in English? Liberal theory treats all citizens and their freedoms equally and consequently, we could remark that the Quebec legislature has enacted an illiberal law. That something was fundamentally unjust in this piece of legislature was evident in the fact that Quebec softened the law to allow the use of other languages as long as French is more prominent.

## **15. Demands for Minority Rights IV- Internal Rules for Members' Conduct that are Enforced by Ostracism and Excommunication**

As Levy explains, many rules and norms governing a community's members are not elevated into law. There are expectations about how a member will behave' one does not behave that way is subject to sanction of no longer being viewed as a member by other members. This sanction may take the form of shunning, excommunication, being disowned by one's family, being expelled from an association, and so on (Levy 1997: 40).

Very often these norms are long lasting rites which are seen as vital for the group's existence. However, on the other hand, "it is increasingly recognized that these internal sanctions, even if informal or non-coercive, can none the less have a very significant impact on the freedom and well-being of group members" (Kymlicka and Norman 2000: 27). In light of the fact that liberal theory bestows respect for the equal freedoms of all the citizens in the state, we need to clarify the instances when a state intervention is necessary in the affairs of a minority community. We need to be able to determine what things groups of any kind, including cultural communities, can freely do without state interference. The line must be drawn carefully, because a group that undergoes such excessive interference in its practices that it cannot govern itself hardly has an existence. The state for example, must ensure that the principle of equal treatment "is not rendered nugatory in central areas of people's lives such as employment, housing and travel" (Barry 2001:123). This however, does not mean that the state should intervene in the affairs of all communities and associations to operate within the principles that are appropriate to be implemented in the polity. In the same way the state has no right to impress autonomy on such entities or individuals for that matter, for this would be imposing a conception of a good life, a violation of the principle of liberal neutrality.

By and large, it is clear that the state needs to observe certain standards for communities, associations and other types of non-state organizations. Admittedly, freedom for association is a core liberal value. As long as the arrangements within the association or the community are accepted among its members by voluntary consent, they are of no interest to the liberal state. A liberal state has no business in regulating the conduct of individuals and associations as long as they do not violate the confines of the liberal state for the protection of individuals. Consequently, liberalism does not insist that all communities should project liberal principles in their organizational structures. Groups have the utmost freedom to handle their affairs in accordance with the wishes of its members. Liberal tolerance "extends to the internal affairs of illiberal groups, provided that they stay within the framework of liberal laws" (Barry 2001: 131). Two provisos are absolutely indispensable: "the first is that all the

participants should be adults of sound mind; the second is that their taking part in the activities of the group should come about as a result of their voluntary decisions and they should be free to cease to take part whenever they want to" (Barry 2001: 148).

However, the "only condition on a group's being able to impose on its members is that the sanctions backing these norms must be restricted to ones that are consistent with liberal principles" (Barry 2001: 128). Membership in a group thus must include the right to exit with no unwarranted losses. There are some costs of exit that are legitimate concern of the state. According to Barry, costs of exit can be divided into three kinds: first, intrinsic costs, those that the state cannot and should not prevent or ameliorate, secondly, associative costs, those ones that the state should generally not prevent although it might be in a position to do something about them, and thirdly, external costs, those costs that the state both can and should do something about, if not outright preventing them then at least reducing them in scale (Barry 2001: 150-151). A member of the Roman Catholic Church who is excommunicated, after publishing of theological works opposed to the tenets of this church suffers intrinsic costs because of no longer being a member of the church.

If the members of the Catholic congregation break off social relations with this person, then he/she suffers associative costs. In neither of these cases should the state interfere. However, if the members of the Catholic congregation and church itself organize a boycott of this person's business, then the state has an obligation to intervene and make the church compensate for the financial costs suffered by this individual. Similarly, if this person's employer is Roman Catholic and fires him/her as a consequence of the excommunication, then these are unwarranted costs of exit and the state should do something about them. Even if the firm is owned and operated by the Roman Catholic Church, "it should not be allowed to dismiss you unless it can show to the satisfaction of a court that the job is one that must for some reason be done by a member of the church" (Barry 2001: 151). On the whole states have a legitimate interest to protect the individual interests for livelihood "in a way that does not infringe the fundamental right of a church to define its own criteria for membership" (Barry 2001: 154). If a religion can treat unnecessarily harshly those who are excommunicated then the freedom to choose religion would be impaired. Other kinds of organizations that are run according to illiberal principles, but have voluntary membership, fall under the same conditions as churches.

The right to refuse association in the first place is also crucial in our debate. Stuart White's explanation of when an association can exclude individuals is commendable on this point. White underlines that individuals "are hardly free to associate in pursuit of some shared conception of the good life and/or good society unless they are also free to exclude from this specific association those who do not share their distinctive beliefs" (White 1997). Three core interests are at stake concerning the legitimacy of excluding membership in an association: expressive interest, opportunity interest, and dignity interest. While expressive interest denotes a situation when an individual's beliefs and life projects are similar to other people with whom he/she associates, opportunity interest explains an individual interest in "having equal access to those associations the membership of which confers significant instrumental advantages in the acquisition of strategic goods such as income and wealth" (White 1997: 928). Finally, White identifies the third core interest as the dignity interest of the individual in "not being denied access to associations on grounds that, given the prevailing social context, are stigmatizing, and thus potentially detrimental to his/her sense of self-worth" (White 1997: 929). Public policies should be guided by these principles so as that an association has a right to exclude individuals from membership on grounds that they hold incompatible

ideological, religious, or philosophical beliefs, with the association's goals. A Muslim, for example, cannot become member of the Protestant Church. However, associations that are crucial in conferring access to strategic goods must have maximally open admissions rules so that for example, a business club cannot exclude women or minorities from its networking activities. Finally, clubs and associations that refuse entry to given individuals must not do so, if their decisions, in the specific social context, symbolize the supposed inferiority of the excluded group, thereby damaging the self-worth of the individuals belonging to this group. A women fitness club, although exclusive of men, would obviously not fall under this category since there are not reasons to believe that the exclusion rule stigmatizes men.

The national minorities members' solicitation of contextually justified rights should be at the very crux of the issue of liberal nation-building, for the right to maintain a given culture, or particular traits of it, should not be understood as an obligatory group rights exercise, neither it should be forcefully imposed on individuals within minority cultures. Thinking about liberal theory and nation-building, we must not overlook the inclinations of all the individual members of the minority groups. What I mean is that liberal nation-building can not be an aim in itself, pursued indiscriminately; the demands for it must be brought about by individuals of the national minorities who wish to preserve their own culture (cf. Tamir 1993: 36-37). For it is not inconceivable that some nations might not want to sustain their minority culture or that part of its members do not want to preserve it, in which case the state should not carry on policies aimed at liberal nation-building pertaining to all individuals of this nation, but only to those concerned about preserving their culture. Without a doubt, the culturally oriented rights are meant to "allow individuals to live within the culture of their choice, to decide on their social affiliations, to re- create the culture of the community they belong to, and to redefine its borders" (Tamir 1993: 8). The public support the minority individuals obtain from the state to pursue their individual life plans, and develop their culture must however, not interfere with the decision of other members of the same culture not to engage in the same process. Obviously, the vitality of a given culture, and its ultimate survival, depends on the commitment of its members, and as far as the liberal theory is concerned, there should not be a forceful decision by the government or by any other organization about the decisions of the individuals within a culture whether their way of life will be preserved or not. Those individuals for example, who do not want to grow up in the culture of their forebears but in the majority culture of the state, must not be forced to give up such a decision. Similarly, individuals who chose not to uphold specific cultural practise cannot be required to do otherwise. The liberal state is concerned about the welfare of the individuals and they can not be forced to live according to certain group practices and traditions if they do not wish to do so.

Liberal theory's dedication to uphold the principles of individual equality of all persons despite authoritative arrangements among members of specific entities is just since to allow otherwise would support theories and practices that see some people as being less valuable than others, practices that have led and still lead to the development of horrible ideologies such as racism, and to bloody, expansionist wars, ethnic cleansing and genocide. In other words, liberal minority rights can not be used to reinforce conservative and oppressive cultural practices against the will of the members of the given communities. A member of a minority community should have the ability to question, interpret, and revise, his/her opinion of the good in life and the value of his/her culture. Individuals "should not be seen as encumbered by duties imposed on them by their history and their fate, but as free to adhere to cultures and

religions of their choice” (Tamir 1993: 39). One should not, therefore, be forced to take part in a given cultural ritual; one can not be forced to learn the language and the history of the community, if one chooses not to. Since “it is a basic tenet of liberal democracy that whoever exercises political power within a community must respect the civil and political rights of its members, any attempt to impose internal restrictions that violate this condition is unjust” (Tamir 1996: 23).

Therefore, although liberal minority rights depend on the will of the members of a specific culture to exercise them, this does not and should not mean that these rights can be prerequisites for customs that are not consented to or practices that even if consented leave long lasting injuries. In line with the principles of liberal theory, practices of illiberal cultures (nations) should be tolerated if, and only if, its members give consent to such ways of life, and only if such ways of life do not threaten the personal integrity of the minors within that culture. (Cf. Barry 2001: 124) For, the freedom of individuals to choose their own conception of the good life is taken to be the genuine liberal principle then if a person freely chooses to live and take part of an illiberal culture there is nothing inherently illiberal or unjust about it, and the state should not intervene. As Tamir has written “if we wish to respect individuals as the authors of their own lives, we must accept that some of their choices will seem to us less valuable than others....their choices merit respect as otherwise, autonomy and pluralism become devoid of all content” (Tamir 1993: 32). Therefore, we should respect the choice of the individuals who “may have a conception of the good that requires them to conform to the norms of the communities that do not value autonomy” (Freeman 1995: 36). For example, if a woman in the UK freely and without interference chooses to participate in a festival where the power of the Lords is portrayed through a ceremony that demotes the ‘lower classes’ and women, then the liberal state has nothing to do about this decision. Similarly, if a woman from Africa upon her will participates in a degrading sexual ritual with a person that is perceived as an omnipotent spiritual derived being, the state would in accordance with the liberal theory be passive in relations to this activity. In both cases, the liberal state has no right to interfere with the choices of what is good or bad in life made by these hypothetical individuals. Consider also Barry’s statement that

There is nothing to stop people from belonging to a church that vests ultimate authority in a Pope or a Patriarch or is run autocratically by a charismatic preacher. Nor is there any liberal principle that forbids a church to instruct its members not to read certain books or watch certain films. The whole point of liberal institutions is to leave people with a great deal of discretion in their conduct, and one of the ways in which they can exercise that discretion is voluntary to follow the orders issued by bodies whose authority they acknowledge. (Barry 2001: 123-4)

However, if an illiberal way of life is forced upon individuals who would under free circumstances choose not to participate in that kind of culture, or who openly choose not to do so, then, I think that the simple ‘right to exit’ would not suffice, the liberal state would have to intervene and protect these individuals. (cf. Kymlicka 1992: 142, Tamir, 1993: 25) Neither, I think that the right of the state to intervene should be left aside as Kymlicka does when he comments that liberal states do not intervene in the internal matters of non- democratic states and that they should therefore not intervene with national minorities. (Kymlicka 1996) Kymlicka’s argument that liberals should ‘speak out against injustices’ and ‘lend support for internal reform of a illiberal culture’ but intervene to protect liberal rights only in cases

'of gross and systematic violation of human rights, such as slavery, genocide, torture, or mass expulsions', does not hold. The protection of individual rights is a priority for any liberal state and no matter how minor the disturbances of these rights are, and how important the indigenous practices are for the survival of given ethnocultural groups, once an individual refuses to be a subject of a traditional custom that trespasses his/her human rights, the liberal state should intervene to protect this right. As Levey has written, "if autonomy is the foundation of liberal political morality, then respecting this value governs the public as well as the private sphere of a liberal society" (Levey 1997: 233). According to liberal theory, no member of a given national minority, or for that matter any other citizen of the state, is to be obliged to follow the customs of his/her native culture if he/she does not choose to do so. In the same vein, no one is obliged to observe cultural practices in a manner defined by other members or authorities of that culture, if he/she does not freely choose to do so. If, for example, a young Greek Orthodox woman is supposed to marry according to the wishes of her parents and objects to this kind of arrangement, the state should protect her from physical punishment from her family and relatives that is usually inflicted upon "restless youth who do not follow the traditions of the family."

The interests of a community in preserving or developing its culture are derived from the interests of its members. Within liberal theory, individuals are the ultimate source of moral claims and the interests of a community follow from these, not the other way around. Consider also Kis' argument:

Only the individual is a being to which interests can be directly attributed. The interests attributed to the community are derived. We can say that a community has an interest in its preservation and the flourishing of its culture if it is also possible to say that the individuals making up the community have an interest in the preservation...and the flourishing....If there is no one who expects a benefit for herself from the existence of the community, then we can not reasonably say that there are interests in the preservation of the community (Kis 1995: 227).

The survival and flourishing of a cultural community can not be taken as being of an ultimate value. Therefore, we must act against the possibility that the interests of certain group of individuals who wish to preserve their culture count more than those who do not wish so if the former oblige the latter to engage in the practices of this culture. Liberal theory is concerned with the freedom for choice in the life plans of all citizens of the state including dissenters from a given culture. Under liberalism, "no one can demand from the state that it treat those wishing to opt out [of cultural norms] as a mere *means* to the life plans of those wanting to stay" (Kis 1995: 232). The emphasis on the individual freedom under the law demands that we do not take a position on the beliefs of any person in the society and that any given group or organization can not abridge this right. As a consequence, Kymlicka's analogy with the non-intervention of liberal states in affairs of foreign countries is void; as Levey has noted, "foreign countries are sovereign states, and it is first and foremost out of respect for sovereignty that intervention is deemed illegitimate, national minorities...typically are not sovereign political entities, at least in the same sense as foreign countries" (Levey 1997: 227).

In general then, the liberal state can not remain neutral to cultural practices that denigrate the freedom for participants who do not embrace these habits. As we have seen earlier in this publication, culture can be described as a structure which comprises a unique set of linguistic, religious, historical and societal norms and

practices. No nation can be said to have a culture that is completely liberal or illiberal. Some of the practices of a given nation will be liberal and some will be illiberal. Certain practices in turn will be more or less liberal. Liberal neutrality can not be dismissed and the state asked to intervene against illiberal cultures taken as a whole for some of its customs will be liberal and some not. Even if the later is the case, whether the liberal state should intervene will depend upon the consent of the individuals participating in the cultural traits. Liberal theory affirms that there are some limits even to one's control over own body; people are not permitted to sell their organs for example. At occasions when a cultural practice physically harms individuals beyond doubt and with no prospects for recovery, the liberal state will be required to react even without the consent of all participants. Thus, for example, sadistic-masochistic sexual rituals that are based on the consent of the engaging parties are permissible as long as the ritual does not permanently damages anybody's health. (cf. Barry 2001: 148)

Under no circumstances, however, can the liberal state be neutral about cultural practices that denigrate the equal moral worth of persons while they are children, or of persons with severed mental capabilities. Liberalism overrides the wishes of parents and guardians of children if they would lead to physical injury or death of the children. The power of the parents to raise their children is not absolute. Neither can the liberal state be neutral about cultural practices that allow non-consensual gender subordination. Indeed, within the freedom for religion the state is neutral about the choice of individuals to join churches, or other denominations of the faith, which do not respect the equality between man and woman. Think for example how the tenants of the Orthodox and Catholic religions, not to mention some others, assign men and women different career possibilities. Or think for example how men and women in Islamic and Judaic tradition have been delegated different spatial and ceremonial roles during prayers. Neither of these traditions implies full and formal equality between men and women. Thus, for example, under the Islamic law a husband may obtain a form of a divorce without informing his spouse by simply repudiating her, without showing cause or any obtaining court's or extraneous institution's approval, while the same right does not exist for women (Barry 2001: 157). Still it is a fact that women and man alike freely decide to join these and similar kind of institutions and pursue their concepts of well being in life through them. The liberal state does not question their choices as long as they have not been forced upon, in case of which the question of choice does not appear strictly speaking. In any case, if any given cultural practices bestow meaning to their member's lives, under the conditions I have just outlined the liberal state is required to respect the right of these individuals to uphold their customs.

## **16. Demands for Minority Rights V-Incorporation and Enforcement of Traditional or Religious Legal Codes within the Dominant Legal System**

The demands for the incorporation of the minority legal systems within the general legal framework of the state are not dissimilar to the demands from the first section of our discussion of the requests for minority rights. In this case, as with demands for exemption from laws that penalize or burden cultural practices, we are discussing the possibility of having a legal system in which certain provision would be functional only for certain segments of the populations. Such a possibility is not unavoidably against the postulates of the liberal egalitarian theory. Federations, for example, have different laws for the federal units and yet can be properly within the liberal framework. Indeed,

there is nothing inherently contradictory about having two or more systems of law operating within a single political jurisdiction: it happens in Canada and the United States- where the former French colonies of Quebec and Louisiana have retained civil law traditions alongside the common law of the larger state- as well in the United Kingdom, Switzerland, and of course the European Union (Kymlicka and Norman 2000: 28).

The crucial question from liberal egalitarian perspective is whether legal systems operating in the country respect equally all the citizens of the polity. In situations when the parallel 'minority law' does not treat women equally, like the case of Mauritius, then the liberal postulates would be violated. This kind of state of affairs is inherently unjust and would need corrections as a legal framework that does not treat all citizens equally.

One well-known case concerning the need for incorporating various religious norms within a unified legal system is the French 'chador case'. In the French city of Creil in October 1989, three girls of Islamic faith came to the local school with their heads covered by the traditional Muslim scarf, part of the chador. A controversy erupted at once: "the school authorities ordered the girls to uncover their heads, claiming that they had to dress like all other students" (Galeotti 1993: 583). The girls, supported by their families and by the Islamic community, refused to comply, and, were expelled from school. Very quickly the case became public and thoroughly debated in the country. Since similar occurrences happened in other public schools the Minister Lionel Jospin,

in order to provide clear guidelines for the whole school system, asked the opinion of the Conseil d'Etat, which in November 1989, formally took issue on the matter, ruling that French students had the right to express religious beliefs in the public schools, as long as they respected others' liberty and on the condition that such an expression did not hinder the normal teaching and school order (Galeotti 1993: 583 ).

Thus, the original decision of the school authorities was reversed and the girls and by extension, other interested parties were allowed to wear religious clothing in the public schools.

What was the problem with the original decision made by the school? The French officials claimed that they were questioning the choice of dress in the name of the equality in the school. However, their decision was more related to imposing uniformity of dress than equality. In other words, the officials asked the Muslim girls to comply to a dress code which was based on the clothes worn by a majority of students. The Muslim veil did not have place in the normal appearance of the students and was therefore deemed unacceptable. Such reasoning however, undermined the equality among the students since it denied the girls the choice to dress as they thought most appropriate. Why should these girls not have the right to dress as they like, given that everyone else has this privilege? To deny them this opportunity would be wrong from a liberal point of view, because in that case they would not be treated as equal to the other students.

The only way the equal treatment could be safeguarded and the only justification for forbidding the girls to wear headscarves would be to prohibit all religious symbols in public schools: the Christian students, for example, would not be allowed to wear crosses, while the Muslim pupils would equally be prohibited from wearing the chador. Given that the school authorities initially decided to ban only the religious clothing of the Muslim students only, and not of that of the Christian pupils, then their stance was inconsistent with the liberal principle of equal treatment of all citizens under the law.

Given that the liberal state's neutrality is related to the variety of social practices such as religion, lifestyle, cultural preferences, and preferred conception of the good in life, provided that they do not harm others, the girls' choice of clothing can not be forbidden without harming the fundamental principles of the liberal theory. The liberal principle of neutrality and equal freedom under the law of all citizens speaks in favour of letting the Muslim girls decide their own preferences and choices without interferences from others, like the other students in the school, even if their choice of clothing might be potentially at variance with that of the majority of their classmates. Since wearing a headscarf is clearly an individual choice of lifestyle, then to deny the girls the right to do so would deny them the right to equal treatment. The decision taken by the Conseil d'Etat was observed of the liberal ideals of equality, and freedom for all citizens. The French chador case can be also seen as important for symbolically recognition of the worth of Islamic faith, a demand for minority rights I will consider in the next section.

## **17. Demands for Minority Rights VI- Special Representation of Minorities**

The key question to be discussed in this section is how can we respond to demands by ethnic and other minorities for some form of guaranteed representation in the state's decision making bodies, especially but not only legislatures. There are different mechanisms to achieve such representation: the quota system, gerrymandering legislative districts so as to ensure minority victories in them, in party-list systems whereby parties have a formal or informal commitments to select a certain portion of their nominees from a particular minority group, proportional electoral systems that ensure representation of the various parts of a plural society, cumulative voting that allows minorities to concentrate their votes, single transferable vote systems which encourage alliances across ethnic boundaries at voting time,

and so on. Additionally, certain nations have developed 'consociational' political devices so as to guarantee the various country's segments representation or veto powers concerning specific parliamentary decisions.

The idea of consociational democracy was introduced by the Dutch political scientist Arend Lijphart in response to the failure of the Anglo-Saxon, majoritarian type of democracy in the new, post-colonial states in Africa and Asia. Lijphart explained this failure from the in-suitability of liberal democracy in deeply divided societies. Instead, he proposed a consociational democracy based on four main characteristics:

- 1) government by a grand coalition of the political leaders of all significant segments of the plural society
- 2) mutual veto or 'concurrent majority' rule, which serves as an additional protection of vital minority interests
- 3) proportionality as the principle standard of political representation, civil service appointments, and allocation of public funds
- 4) a high degree of autonomy for each segments to run its own internal affairs

(Lijphart 1977: 25)

Additionally, consociationalism includes such elements as the: separation of powers, both formal and informal, balanced bicameralism and minority representation, multiparty system, multidimensional party system, territorial and non-territorial federalism and decentralization (Lijphart. 1984: 23-29). In consociational democracy, ethnic groups are recognized by the state and given all the necessary conditions to preserve their separate existence and identity. Furthermore, the consociational state takes "a neutral stand toward the conflict between the groups and impartially implements the compromises reached by group elites" (Smootha 2001: 19).

Seen from a liberal perspective, consociationalism and other devices aimed at special representation of minorities are not without problems. Critics of consociational democracy emphasize that it results in the division of a pluralistic society into more homogenous and self-contained elements, effectively undermining successful cooperation among them. On that view, consociational democracies are by nature stagnant, conservative, and oppressive. Since consociationalism fragments the political community into more self-contained elements, a highly homogenous and conformist community may have a dampening effect on individual liberty. Furthermore, as Lijphart concedes himself, consociational democracy is "more concerned with the equal or proportional treatment of groups than with individual equality...segmental isolation and autonomy may be obstacles to the achievement of society wide equality" (Lijphart 1977: 49). Finally, consociationalism accentuates elite responsibilities in reaching political accommodation with leaders of other segments of the population.

Special representation of minorities via quota systems on the other hand might be problematic because it implies a unity of political attitudes based on arbitrarily given characteristics such as race, ethnicity or culture. Moreover, granting representation along ethnic lines might actually homogenize communities, resulting in similar problems as with consociationalism. Homogenized ethnic communities caused by special representation rights might increase the possibilities for inter-ethnic political cleavages and discourage cooperation. Finally, "some representation

schemes are also open to the charge that they require officially identifying voters on the basis of race, in the way that South Africa did under its 1983 (ostensibly) tri-racial constitution” (Levy 1997: 46).

As we have argued in chapter two, liberal egalitarianism offers arguments for support of cultures of members of minorities. However, liberal egalitarianism does not necessarily entail support of the demands of the minorities in the political realm. According to liberal egalitarianism, “justice requires equal rights and opportunities but not necessarily equal outcomes defined over groups” (Barry 2001: 92). Therefore no particular individual can proclaim that he/she has a right to a guaranteed representation in the state’s decision making bodies, and to any of the above mentioned mechanisms. On the other hand, group-based rights to political representation need not be contrary to basic liberal principles. Liberal egalitarianism is concerned about outcomes in which people have less resources and opportunities than others when this is due to circumstances that they had no responsibility for causing. Therefore, specific group-related rights and political mechanisms for achieving minority representation could be employed in situations where a need arises for ameliorating systematic disadvantages in the same manner as policies aimed at ‘affirmative action’ do.

Therefore, the need for special treatment of disadvantaged minorities can be related to a situation where the process of nation-building has been undertaken with no regard as to the interests of the members of the minorities and such a long period of time that these individuals have been permanently excluded from the economic and social mainstream. In such a situation attempting to resolve the problem through liberal nation-building would not suffice, because the effect of the long-term oppression would not be so easily rectified: it would take a very long time. Under such conditions, we should stress that granting special representation rights on temporary basis falls within the liberal theory that emphasizes the equality of all its citizens. However, the demands by members of ethnocultural minorities for a form of an affirmative action in the political sphere are justifiable only if they are adopted in legal provisions on a temporary basis. Once the effects of the long term oppression are mitigated, the provisions for special representation would be redundant. Kymlicka seems to agree on this point as well, as he too speaks of the temporary status of these group rights,

in so far as these rights are seen as a response to oppression or systematic disadvantage, they are most plausibly seen as a temporary measure on the way to a society where the need for special representation no longer exists....society should seek to remove the oppression and disadvantage, thereby eliminating the need for these rights (Kymlicka 1995).

Evidently, once the systematic disadvantage has been balanced out, the need for special representative rights becomes obsolete (cf. Offe 1997: 24).

## **18. Demands for Minority Rights VII- Symbolic Recognition of Worth, Status, or Existence of Various groups Within the Larger State Community**

This is a catch-all category for a “wide variety of forms of group recognition within the institutions, symbols, and political culture of the larger state” (Offe 1997: 29). At stake are such issues as “the name of the polity, its flag, its coat of arms, its national anthem, its public holidays, the name by which a cultural group is known, or the way a group’s history is presented in schools and textbooks” (Levy 1997: 46). The core of the discussion is what the state identity is as seen from the perspective of members of the minority cultures. A state that is serious about liberal nation-building will take the ethnic identities of all groups within the country into account and not only of the majority. In fact, more inclusive the state is of the symbols representing the individuals belonging to minority groups, more minorities will identify with the polity at large. Therefore, bulletin boards, resource books, and films that show ethnic diversity should reinforce the everyday realities of citizens of a given country. Although it is difficult to estimate when the proper decision regarding the national symbols is reached, it makes sense to include members of the minorities in the process. The more state markers, like the national hymn, flag, or coat of arms, correspond to the wishes of the members of the minorities, the more minorities will feel that these symbols and the state belong to them. In cases where cultural minorities represent significant portions of the population, the national symbols might even need to transcend the identity markers of the ethnic majority and reflect the diverse interests of the population in order for the members of minorities to accept them as legitimate and overarching.

Additionally, even such apparently practical issues “as the distribution of federal powers may carry symbolic importance if a national minority controlling one of the provinces interprets an asymmetrical distribution of powers in its favour as recognition that it deserves special status as being more than ‘just another province’” (Kymlicka and Norman 2000: 29). Indeed, the symbolic value of asymmetrical federalism has dominated the agenda in Quebec and Catalonia where nationalists are seeking constitutional revisions from Canada and Spain. In former Yugoslavia, Kosovo Albanians have been asking for a status of a constituent republic within the federation for a long time. In general a state that does not contradict the equal rights of its citizens would be especially assertive in granting recognition to symbols belonging to individuals from minority cultures. On the other hand, the same states include members of minorities in deliberations over national markers to the greatest extent possible so the symbols of the state reflect the variety of opinions and cultural practices as closely as feasible. Such states respect the will of their citizens equally and manage multicultural challenges well.

An example taken from the Republic of Macedonia shows how important the acceptance of minority symbols can be for members of minority cultures. The controversy revolves around the 1991 preamble of the Macedonian constitution which declared that “Macedonia is established as a national state of the Macedonian people, in which full equality as citizens and permanent co-existence with the Macedonian people is provided for Albanians, Turks, Vlachs, Romanies, and other nationalities living in the Republic of Macedonia.” The preamble of the Macedonian Constitution explicitly recognizes the role of the national minorities in the country. Unlike some other states in East Europe which have in the preambles of their new constitutions unambiguously declared their countries to ‘belong’ to the majority

nation (see for example the constitutions of Romania, Albania, Croatia or Estonia) and 'the other minority groups', Macedonia specifically mentions its minorities within the Constitution. However, the naming of the peoples within the preamble is a highly problematic exercise, since on a symbolic level it recognizes the primacy of the Macedonian nation over the other minority nations which are only guaranteed 'full equality as citizens.' Symbolically, then, we have classification of peoples into three categories, the Macedonians as the primary bearers of the right to the state, the members of the four mentioned minorities as peoples with equal rights but not primary claimants to the right to the state, and the members of nations not even mentioned in the preamble except as 'others.' The preamble cited above gave rise to complaints from all citizens of non-Macedonian background because they were not equally valued as the majority nation. Even further, Macedonian Serbs or Macedonian Bosnians might say that their symbolic worth is not only unequal in comparison with the majority Macedonians, but also in contrast to the Macedonian Albanians, Turks, Roma, and Vlachs.

The preamble of the Macedonian constitution violated the principles of liberal equality and was a cause for great resentment among the national minorities. The political parties representing the interests of the largest minority in Macedonia, the Macedonian Albanians, were particularly vocal in showing their dissatisfaction with the preamble of the constitution of Macedonia. Members of the Party for Democratic Prosperity, a party concerned with the well-being of the Macedonian Albanians boycotted the session when the new constitution was promulgated on 6<sup>th</sup> of January 1992. Ever since then, this and other Macedonian Albanian parties have urged for constitutional reforms which would change the words of the preamble. (Daskalovski 2001)

Another problem with the constitution is the position of the Macedonian Orthodoxy. One problematic aspect of the constitution is article 19, which stipulates that

- 1) The freedom for religious confession is guaranteed.
- 2) The right to express one's faith freely and publicly, individually or with others is guaranteed.
- 3) The Macedonian Orthodox Church and other religious communities and groups are free to establish schools and other social and charitable institutions, by ways of a procedure regulated by law.

Although in practice the third paragraph of article 19 does not discriminate among the citizens of the country it clearly symbolically ranks the Macedonian Orthodox Church higher, or as being special in relation to the other religious communities. This wording of article 19 has been cause of considerable amount of friction between the authorities of the Macedonian Orthodox Church and the heads of the Islamic and Catholic communities within the country. In the years since independence, the Macedonian Albanian political representatives have also called for the named article to be amended.

Indeed, citing the problematic aspects of the Macedonian Constitution as evidence of discrimination, in 2001, radical Macedonian Albanians undertook violent actions against the institutions of the state aiming to change their legal status. After armed clashes in Macedonia in the spring and the summer of 2001, under the supervision of the experts of the international community the preamble of the constitution was indeed changed into a more liberal version which describes the citizens of the republic as the bearers of the right to the state.

Similar example to this one can be found in a country considered one of the birthplaces of democracy, the United Kingdom. Great Britain, in its legal documents symbolically favors the Anglican Church vis-à-vis other religious denominations, like the article 19 in the Macedonian Constitution. Namely, paragraph four, section 18 of the British “unwritten constitution” states the following:

There is no religious bar to the holding of public office except in the case of the Sovereign who must by law be a Protestant. The Church of England and the Church of Scotland are the established 'official' churches for state ceremonies of a religious nature. Their members, however, do not obtain any advantages from being members of an established church rather than of any other church.

Before going into further discussion one should note that the United Kingdom does not have a written constitution. Britain's constitution is to be found partly in conventions and customs and partly in statute; the Act known as the Bill of Rights 1689 deals with the exercise of the royal prerogative and succession to the Crown. Therefore, there is no agreed mechanism for changing the (unwritten) de-facto constitution and even disagreement about what it actually contains. Nevertheless one church, or rather two, one for England and one for Scotland is symbolically promoted as being the most important one within the country, much like in the Macedonian constitution. Indeed, “in nearly all of western Europe, there are points of symbolic, institutional, policy and fiscal linkages between the state and aspects of Christianity” (Modood 1999: 90). Again, although in practice the fourth paragraph of section 18 does not clearly legally discriminate among the citizens of the country, it plainly symbolically ranks the Church of England and the Church of Scotland higher in relation to the other religious communities. As it has been argued by professor Ninian Smart:

The symbolism of the Queen as Head of the Church means that other religions, even if more vigorous, have the appearance of being second class-Catholicism, Judaism, Methodism, Nonconformist varieties, Sikhism, Islam, Hinduism, and so forth....What the situation presents, albeit in a rather muddled way, is the identification of official religion with the supreme symbol of national identity and loyalty. In events such as Coronations, Royal Weddings, we see celebrated traditional English or British nationalism, which has no explicit place for the ‘new British’ that is for people who are citizens but historically have connections to religious and cultural traditions outside of the British Isles (Smart 1987: 385, 390).

Evidently, in both instances not all Macedonian and UK citizens are symbolically valued equally because those members of the ‘official churches’ have a stronger reference to the paramount legal documents in these two countries than members of other religious groups. Those citizens which are not members of the privileged religion are “defined to a lesser or a greater extent as outsiders” (Saghal and Yuval- Davies 1990: 31). Alternatively, Bhikhu Parekh has criticized the provisions favouring the Church of England by stating that “to ground the public culture in Christianity is to treat non- Christians as second-class citizens” (Parekh 1991/2: 47). How easily symbolic discrimination can lead to negative illiberal practices explains Tariq Modood who says that

the identification of official religion with the supreme symbol of national identity has a material impact, for it has contributed in various times to anti-Semitism, anti-Irish prejudice, anti-Indian racism and so on by reinforcing the image that Jews or Catholics or Hindus, Muslims, or Sikhs are not really British and therefore can not really be trusted to understand or cherish Britain, its history and people, or have a lesser birthright to it, and so may legitimately be denied some of the available jobs, prizes, and distinctions and may legitimately be objects of suspicion in times of political and international tension (Modood 1994: 56).

Even more worryingly, the Church of England has additional advantages, in relation to the other religions which are not only symbolic in nature. Thus, in UK, the Church of England has a number of privileges such as the following:

- the Church carries out the coronation and all the other state functions where prayer or religious ceremony may be required;
- twenty-six bishops have *ex officio* seats in the House of Lords;
- Church of England chaplains are employed for religious and pastoral duties in the armed forces and the prison service;
- ecclesiastical courts are part of the legal system;
- the doctrines and sensibilities of Anglicans alone are protected from blasphemy by law (Modood 1994: 56)

None of these provisions fit well with the liberal theory that stresses the importance of the equality of all citizens under the law.

Britain found out very unexpectedly and passionately that such inequality of the citizens is an important matter during the so-called Rushdie affair. Among other things the affair had to do with the fact that only the English Church has legal protection against 'blasphemy.' Paragraph 1 of section 18, of the British "unwritten constitution" states that "worship and religious teaching take place without any interference from the State. There is complete freedom for thought, conscience or form of worship and no restriction on the right of any citizen to change his or her religion. Atheists and agnostics are also free to propagate their views", paragraph 2 announces that "A person may, however, be held guilty of blasphemous libel if he or she publishes scurrilous and offensive references to Christianity that go beyond the limits of proper controversy. This does not apply to debate and discussion about the truth of Christian doctrines."

The problematic aspect of paragraph 2 from a liberal perspective is not only that the restriction of the freedoms of the citizens to publish offensive and scurrilous references to Christianity is to be judged by 'the limits of proper controversy,' a measure which is relative in nature and subject to potential harsh measures and manipulations by the legal organs. The problem is even bigger if we taken into account that the proviso is only to be applied to references to Christianity. The law leaves members of other religious communities in an unequal position with those practicing within the Christian churches. The protection of Christianity from blasphemy indicates that the non-Christian citizens how would like their religion to be protected the same way are not in an equal position as their Christian fellows.

Indeed, upon the publication of the *Satanic Verses* by Salman Rushdie, Muslims throughout the world, UK included, complained that the book "had 'hurt' them, 'offended' their 'feelings', and was guilty of gross 'blasphemy'" (Parekh 1995: 307). Muslims from Britain insisted that the book, which explores the birth and the triumph of Islam from a new, alternative perspective, should not be issued in paper-

back edition and be withdrawn from public libraries, and that the existing law of blasphemy be extended to other religions as well. The late Ayatollah Khomeini made a notorious speech and issued a *fatwa* against the writer, strongly influencing British Muslim reactions. The affair, "generated a new mood [among Muslims in the UK] of aggressive intolerance" (Parekh 1995: 309). Under these circumstances, antagonism between the English and Muslims grew significantly. Evidently, the Rushdie affair touched upon the position of those citizens of UK who are not members of the Church of England, and are not protected from blasphemy laws. In this sense, the affair can be seen as an example of a demand for the minority right of incorporation and enforcement of religious legal codes within the dominant legal system. The case is similar to the chador affair in the sense that both are concerned with the importance of symbols for minority members and for equal legal status of the minority religious codes.

A liberal state has "no special claim to religious truth or authority, can not join such debates about which is 'true' religion, but must allow citizens to decide for themselves and ensure that no one's citizenship is enhanced or privileged simply because of their choice of religion" (Modood 1994: 69). To endorse a single church as official, as is the case in Great Britain, is to impose upon the whole society a single truth about the public notion of the state and the society. This situation is unacceptable to liberals and Muslims alike. The solution that the Muslims from the UK advocated was to extend the law on blasphemy to all other religions. However, the law which is vague and unclear about 'what are offensive references to be judged by the limits of proper controversy' is best to be avoided if the state wants to preserve a liberal order. Instead a legal provision which formulates incitement to religious hatred as a legal offence would be a better alternative in protecting the freedoms of the citizens of the country.

Besides this law, Britain unequally treats its citizens in relation to the public financing of religious schools and institutions. To be exact, according to the provisions in the 1944 Education Act the state meets most of the capital and all of the running costs of the denominational schools of the Anglican Church, Roman Catholic Church, Methodist Church, and the Hebrew Religion. However, there was a

rejection of application for state-funding to Muslim, Jewish Orthodox, and Seventh Day Adventist schools,....and there is some evidence to suggest that there is institutional discrimination against non- Christian faiths in the processing of requests for planning permission to build places for worship (Modood 1994: 97).

The state refusal to equally support and sponsor 'new religions' in the UK does not follow the liberal principle of equality of all citizens and could be a cause of further ethnic and religious turmoil. Public funds were granted to an Islamic school only in 1998 in the United Kingdom, a step which marks the beginning of a process to bring these minority schools into the mainstream along side the other Christian and Jewish schools. In any case, privileging the official churches in Macedonia and the United Kingdom, and the reactions among part of the citizenry disadvantaged by this provisions, illustrate the importance of symbolic equality of all the citizens within the state.



## Conclusion

### 19. The Nation and Egalitarianism

This publication plays a part in the rapidly increasing debate among contemporary political theorists concerning the politics of identity or/and multicultural questions. Throughout this publication, I have dealt with specific but weighty issues within this debate. More accurately, the reader is by now aware that the main goals of this publication were, on the one hand, to engage in a theoretical discussion concerning the question whether and how liberal egalitarian political theory can explain and justify minority cultural rights. Once this was established, this publication demarcated the scope of these minority rights.

The starting point of inquiry was an interpretation of the liberal egalitarian theory based on the works of John Rawls and Ronald Dworkin, two of the most prominent authors in the field. Then, following a brief introduction, the basic ideas and principles of the liberal egalitarianism were discussed in the second chapter. Here I pointed out that the theories of these leading liberal egalitarians share fundamental belief in the equal moral worth of persons and consequently, seek societal institutions that treat all people as such. Both Rawls and Dworkin argue that liberal justice requires the elimination of morally arbitrary inequalities, namely those inequalities arising from differences in social circumstances and natural talents. For them justice requires compensation or removal of undeserved or morally arbitrary disadvantages, particularly if these are profound and pervasive and present from birth. Dworkin explicitly argues that natural circumstances and endowments are arbitrary from a moral point of view; only conscious choices should be relevant to as what individuals deserve. Consequently, liberal egalitarianism should strive to make the effects of individual choices predominate over those of personal luck.

Furthermore, liberal egalitarianism requires that while each individual enjoys an expensive set of rights and liberties, certain distribution of resources is necessary by the government in order to ameliorate the inequalities in natural circumstances and endowments and market failures. In Dworkin's view, the government, through policies of redistribution, needs to strive to achieve equality of resources. This is not a simple equality of the overall share of resources, but an equality that requires that choices be made with an eye to their consequences for others: people's resources should be sensitive to the choices they make. In other words, any differences in resources that are due to people's choices are their own responsibility; liberalism cannot be responsible for inequalities that result from free choices made by individuals.

Both Rawls and Dworkin stress that citizens in a just society are owed equal respect and concern by the state. Rawls, for example, stipulates an original position in which all involved in the process of choosing the institutional design of society have equal power. Due to the specific design of the original position, all individuals promote their interests by equally taking account of the wellbeing of the other people in the original position. Furthermore, an important idea developed by Rawls and utilized in this publication is the concept of primary goods. According to Rawls, people in the original position would want the most extensive set of primary goods as

possible. The primary goods such as liberty, wealth, opportunities, and the bases of self-respect, are for Rawls, instrumental to people forming and pursuing their conceptions of the good life, and are consistent with state neutrality. Everybody is understood to want primary goods as they are valuable in advancing their conceptions of good life.

One last comment to be made here about the theories developed by Rawls and Dworkin is that they assume that the liberal state should be neutral among conceptions of the good life. Thus Rawls, in *A Theory of Justice* presumes neutrality when he speaks of the original position. Since decisions about social institutions are made by people behind the veil of ignorance, who lack knowledge that would enable them to choose in a partial, selfish manner, the veil of ignorance secures neutrality of justification between competing conceptions of the good. As no one knows his own conception of the good no one is in position to ask for a particular concept of well-being to be imposed on others. Similarly, for Dworkin, equality is the founding principle of liberalism and neutrality is its normal practical consequence and therefore he construes neutrality as flowing from considerations of equal respect and concern. For him, liberal neutrality is comprehended as 'the independence of political decisions from any particular conception of the good life, or what gives value to life.' The government does not treat citizens as equals if it prefers one conception to another, either because the officials believe that one is intrinsically superior, or because one is held by the more numerous or powerful group.

Having briefly outlined the main ideas of Rawls and Dworkin pertinent to the further discussions in this publication, in the second chapter I have discussed the relationship between liberal neutrality and the nation-building process. I have commented how the nation-building process has in recent years been the subject of much criticism from different and sometimes even antagonistic philosophical circles. Multicultural advocates have stressed that modern liberal states violate the neutrality principles of the liberal theory, since states choose the language and culture of the majority ethnic group in the process of nation-building. This situation is bothersome for supporters of multiculturalism, who favour special provisions for various ethnic, religious or gender minority groups. In chapter three I considered the defence of minority rights put forward by Will Kymlicka, the most important political theorists discussing 'multiculturalism' and minority issues in the last decade or so.

Kymlicka's ideas can be summarized by a 'autonomy/freedom - culture connection' having three central assumptions: a) that secure cultural membership is an important good; b) that the good of secure cultural membership is something which is enjoyed to a greater and lesser degree by the members of different cultures in the country; and c) that the disadvantages associated with insecure cultural membership require and justify intervention to support struggling minority cultures. Kymlicka argues that secure cultural membership is an important condition of freedom, the lack of which is a serious disadvantage. Freedom for Kymlicka requires a context of choice for devising one's plans for living a meaningful life, and culture is the 'provider' of this context. Culture, for Kymlicka, is synonymous with 'a nation,' and since members of minority cultures have great difficulties in securing this condition for their freedom, their predicament is a question of circumstances rather than choices, as state intervention for minority cultures is justified.

My criticisms of Kymlicka's exposition are multilayered. I see the main problem of Kymlicka's argument in his definition of societal culture, under which culture is taken to embrace the totality of human life within a society and connected to the ability to make meaningful choices in life. Kymlicka's societal culture is the aggregation of all the human activities in the nation, so that more available societal

activities mean bigger set of choices for autonomous life. However, as I mentioned the equation between loss of the societal culture/nation and the loss of freedom is highly improbable since it is inconceivable that a culture will simply disappear and that its members will not be able to at least submerge into another one. A member of a minority nation does not simply lose all the range of activities in life when his/her culture is being assimilated into a larger one. Instead his/her culture is simply substituted with another. His/her freedom to make meaningful choices in life remains, even if this individual might not understand all the practices and customs of the bigger group and in this sense might not have the same variety of options as his/her old culture provided. I point out that Kymlicka's claim becomes less apparent if we comprehend that an individual can scarcely lose his/her freedom if a particular cultural practice has been discontinued or has altered its content and meaning. So if a dance, theatre or a custom of a given nation has been lost for some reasons; there is a loss connected to it but this loss can hardly be said to be the freedom for the individuals belonging to this community.

I go on to clarify different cultural traits that are more or less important for a person's capacity to form and revise a concept of the good life. For example, there is a great difference between an individual who is for some reasons forbidden to use his/her native tongue and if he/she is prohibited by the state to perform in a particular dance. There is a degree by which our freedom is affected if cultural traits are discontinued or disallowed; banning people from speaking their mother tongue in public or in private affects their ability to freely chose a concept of good life more than a ban on a traditional dance. I emphasize that Kymlicka's reasoning does not make it clear in which sense a loss of culture means a loss in personal freedom. One of the examples I pin down is the case of a person who is bilingual or bicultural where there would be a loss if such a person for some reasons lost one of his/her own languages or cultures, but the point is that there is no loss of autonomy. Additionally, I stress that in some cases a loss of a traditional culture might actually increase individual autonomy. Also, I remind that any given individual typically moves around his own national culture, he/she might also appreciate, adopt, or develop different cultural practices of other (ethno)nations instead of those of his own nation.

Moreover, I criticize Kymlicka's claim that cultures are justifiably important because they are necessary to the freedom and autonomy of individuals since it seems inconsistent with developments around the world. Minorities seek cultural rights because culture or some aspect of it has a meaning for them that they deeply cherish. In general I explicate that the relation between culture and individual identity and the exercise of freedom cannot be taken so straightforward as Kymlicka does, since we cannot pose a direct link between (societal) culture and individual freedom without looking at particular aspects or traits of the culture and their relevance to the individual wellbeing.

Following my criticism of Kymlicka, I reconstruct his argument in order to defend claims in favour of cultural rights. Firstly, I elucidate how Kymlicka's view that culture provides its members with meaningful ways of life across the full range of human activities is generally agreed upon by other social scientists. I maintain however, that Kymlicka jumps too quickly into connecting culture and freedom as necessary items for defending minority rights, and that the right approach would be to keep the discussion within the domain of culture. Since cultures consist of various shared symbols that actors invest with meaning, the importance of various cultural traits is universal: not only minorities, but also members of majorities deeply cherish them, and wish them to flourish. I explain how a person's membership in a culture is related to the cultural matrix in such a way that an individual develops aspects of the

structure through his own experience. Some aspects of the structure, such as language, are typically internalized generally by all members of one culture but the acceptance of other elements will be particular to the individual.

I stress that what is important is that the national identity is developed individually via a process of accepting some aspects of the structure. For some individuals the number of relevant elements of the matrix necessary for development of a national identity will be low, while for others it will be quite high, and some will necessarily combine elements of their structure with aspects of other people's structures. The combination will again be contingent on individual choices. Taken together, various cultural traits or symbols make sense of the lives of different individuals. I explain that beyond this, the value individuals get from various cultural traits is diverse:

- an individual may embrace a cultural trait that is helpful for his/her pursuit of well-being in life, such as learning the native language

- somebody may embrace a cultural symbol because it makes him/her content or happy for example learning a difficult folk dance or song

- an individual may very well believe that being emerged in his/her national culture is what good life is about, as in the case when someone is preoccupied in reviving or reawakening the traditions of a given culture as the more educated nationalist leaders did in the end of the nineteenth century.

A combination of these categories is also possible, as in the case when an individual holds on to a cultural practice that makes him/her content and is a part of what he/she thinks life is all about. To elucidate all these categories, I offer an example of a second generation Macedonian emigrant who lives in Toronto. I specify that the value this Macedonian gets from various cultural traits that constitute his/her national identity might be instrumental in a sense that with them he/she can achieve his/her ends in life. Alternatively, this individual could highly value cultural traits for reasons independent of whether or not they help him/her realize his/her highest order interests in life. Still, on the other hand, since cultural traits are part of our identity, both what we are and what we become, they could very well constitute our understanding of the good in life. For some rare individuals, upholding the way of life and identity of their ancestors may be the chosen concept of wellbeing in life.

I explain that it is important to understand that there are a number of cultural traits that individuals across the board will need to develop or preserve for without them they would face severe disadvantages in life. It is fair to assume there are specific cultural traits, such as the maintenance of one's native language that would be of the interest of all individuals in the modern society, regardless of their cultural/ethnic background. Furthermore, I point out that without cultural membership, we would have little chances for realizing our life plans, and that is why it is important to us that culture is treated as a primary good. Culture and its traits are the essential link for human self-perception and orientation in life, and in the context of the modern societies our cultural membership/national identity will be an important part of our lives.

I maintain that these reasons justify state assistance protecting cultural symbols of all citizens. Given that, as a rule, individuals feel most comfortable with the culture they grow up in, then a typical need will be the preservation of a number of cultural traits of one's own community or nation. Thus, inspired by Kymlicka's discussion about the worth of culture, I outline the first argument in favour of liberal nation-building, namely the paramount importance culture and its various traits plays in the lives of all individuals. So, in the political realm, cultural membership and national identity are to be seen as 'primary goods' in the Rawlsian understanding of

the concept. In such a case, support of cultural practices and traits of all the citizens, including members of the national minorities, is required by the liberal egalitarian state.

In the second part of chapter 3, I discuss what we mean when we exclaim that the liberal egalitarian state is obliged to support cultural practices. At this point I begin to determine exactly what does this premise imply for the public policies of the liberal egalitarian state. To do so, I closely look into Kymlicka's line of reasoning in favour of minority rights in relation to his claim that minority rights can be defended as a response to unequal circumstances. Kymlicka emphasizes the need to rectify the unchosen circumstances in which members of minority cultures find themselves by granting them special rights to protect primary good of cultural membership. As he writes in the Canadian context, inequality in the quest for cultural membership for members of the aboriginal communities has 'nothing to do with the choices of aboriginal people.' For Kymlicka, because cultural membership is an important primary good which underlines our choices, special political rights and status for minority cultures are required. According to him, these rights:

may impose restriction on the members of the larger society, by making it more costly for them to move into the territory of the minority (e.g. longer residency requirements, fewer government services in their language), or by giving minority members priority in the use of certain land and resources (e.g. indigenous hunting and fishing rights) ...but the sacrifice required of non-members by the existence of these rights is far less than the sacrifice members would face in the absence of such rights (Kymlicka 1995: 109).

The point is that the protections the members of the minority cultures enjoy against other citizens "ensure that members of the minority have the same opportunity to live and work in their own culture as members of the majority" (Kymlicka 1995: 109).

I noted that the principle undertaking of this project is not to analyze problems with the approach which situates minority rights within the egalitarian context of 'unchosen circumstances' but the specific instruments that Kymlicka foresees for its realization. As I have argued, Kymlicka envisions illiberal and non-egalitarian procedures vis-à-vis members of the majority cultures, and restricts the rights of the individuals from the native community so as to protect the way of life of this specific minority. Thus, Kymlicka proposes measures that would restrict the freedoms of the members of the Canadian majority in order to preserve the life of the Canadian aboriginals. It is not clear, however, how my children's learning English in schools affects the life choices of the children of the aboriginals. Kymlicka mistakenly believes that if education is provided in English language, this will be at the expense of the provision of services and education in aboriginal languages. To be treated equally, a Canadian English speaker has the same right, when the circumstances allow, i.e., when there is enough interest from parents, to have a school with classes in English as does a member of the aboriginal community. If the lingua franca in the region is the language of the native population, then children of Canadians who speak English would need to have this idiom also taught in school. But it is absurd to say that providing facilities to 'Anglo-Canadians,' including public education, does not treat members of the native community equally. I have argued that if the protection of cultural membership of the aboriginal population is against the principles of treating all citizens as equals, then we can not possibly support it and claim liberal minority rights for the native population as Kymlicka does.

On the other hand, I have noted that there is also a problem with individuals and practices that go against the liberal premises of equality. In cases where certain the aboriginal policies are against the principles of equal respect of all citizens, the liberal state has a duty to intervene. The principles of cooperation among the Canadian Indians, as freely devised among themselves are relevant on the land they own. I explained that if the land which the aborigines use for their purposes is not their own but is public, then, to restrict other citizens from using it via procedures such as Kymlicka suggests would be to treat them unequally, even if the policies are developed in order to protect a specific way of life, that of the aborigines. I made clear that as long as the Canadian native population lives in the same state with other citizens, they have to respect the common laws and regulations. There could be occasions where the use of public facilities and land would not necessary coincide with the way of life or customs of the aborigines. I pointed out that in such situations, Kymlicka's proposal that the non-availability of options corresponding to beliefs about value of members of minorities should warrant a liberal egalitarian intervention because it does not come about as a result from the preferences and choices of the members of that culture, but from the choices of other citizens, can not be rectified by liberal egalitarianism because, as has been also stressed in Dworkin's theory, cultures are evaluated from the market point of view and there they come and go. Contra Kymlicka I stressed that a liberal state can not rightfully restrict the rights of the majority citizens to reside in public land or to have public education and other facilities in the official language if different then the language of the aboriginal community, even if this threatens the life of the natives as Kymlicka seems to indicate.

After critiquing Kymlicka, I have further analysed the relationship between liberal theory and nation-building. I explained that nation-building is justified from a liberal point of view. Nation-building suits well the requirements of justificatory neutrality because it is a process which equally provides all citizens in a given polity a tool for participation in the political life, and a tool to be used for competing on the nation labor market, while in the same time engendering trust among the members of various ethnocultural groups within the country. I have then elucidated that the state in the nation-building process unavoidably privileges a certain language or culture and that this puts minority persons who have preference for their own language and culture in an unequal position to the rest of the citizens, no matter how important the minority culture and language is for them. Further on, I stated that if we can show that for certain reasons a state needs to implement a policy that gives advantage to some conceptions of the good, we have a claim that the state attend to our conceptions of the good in a similar manner, for otherwise we would suffer discriminated. Supporting rights for members of minority communities is based on the need for equal treatment of the conceptions of life for which the liberal state stands. I noted that the issue of equal treatment of all citizens, regardless of their credo on what constitutes well-being in life, arises when the state, which for the aforementioned reasons has to adopt one language and culture as official, prevents members of minorities who wish to do so, from developing and using their own language and culture. If denied the opportunity and means to enhance their own particular culture and language, individuals of the minority culture, who might already feel marginalized by the nation-building process conducted in the language of the majority, might become increasingly politically mobilized and agitated.

I explained that individuals of the minority cultures seeking to promote their own distinct language and identity can not be satisfied *only* with the formula of 'colour blind' laws applying to persons of all races and cultures, as these might not

necessarily be adequate to meet minority demands. Liberal theory's emphasis on citizen's equality cannot be satisfied if certain individuals within the state have public means to learn their language and others do not. Given the commitment to neutrality and to the equal respect and concern of the lives of all citizens in the polity, and given the unavoidable state support for the process of majority nation-building, the liberal state then needs also support minority nation-building. The undeserved circumstances in which members of national minorities find themselves because of the process of nation-building forms the second argument in favour of more sensitive national building on the part of the state.

In the following chapter 4 I deliberate upon the question of the rights individuals who belong to minorities, should enjoy as a result of a just nation-building process. A commitment to equality of all the people in a political society will allow members of minorities to pursue their own conceptions of the good life with equal support from the state as for the members of the majority groups. But what are the extent and the scope of the individual rights liberal theory can support within fair nation-building? I argue that a proper understanding of liberal theory's commitment to the principles of equality and freedom for all persons under a given state's jurisdiction allows for a liberal nation-building where *all citizens of the polity*, including individuals belonging to minorities, could legitimately become benefactors of such a process. I note that the provisions assumed by liberal nation-building are just as long as they respect the individual freedom for each and every citizen of the state, and can not be legitimate if are related to collective bodies qua corporate entities. Furthermore, I elaborate that equal concern for all citizens of the state necessitates that the individuals' preferences concerning public support of cultural practices are given equal weight. To find a more precise answer to the question of the limits of public support of minority cultural practices, I criticize Dworkin's argument in favour of state support for art and culture. I point out that Dworkin's position forces the state to make judgements about which forms of cultural activities, merit support, and therefore violates the principle of liberal neutrality. Alternatively, I maintain that if various cultural activities are important to individuals then it makes sense that the state publicly supports them.

I propose that we adopt a system where the state budget for cultural activities will be suited to reflect the dispositions of the citizens concerning which kind of activities need state support. Hence, the tax forms could ask all citizens how they would like the amount of tax the state uses for supporting cultural activities to be used. Furthermore, at the end of the list there could be a designated space for an additional option thought worthy of support by the citizen filling the form. Based on the results of this annual survey, the state would allocate funds to different existing cultural institutions, like operas, theatres, or classical music philharmonics, and the amount spend on specific cultural institutions would correspond to the share of the budget preferred by the citizens.

Further on in the chapter I discuss complications in using this scheme such as how to spend the money if there are, for example theatres different in size, performances, and so on. At any rate, all the citizens in the polity will have incentives to show a preference, for otherwise the conceptions of the good life of other people would be counted more weightily in regards how the state uses public funds. I stress that under such a scheme there might be a danger that well-established institutions of high culture, like the opera, would not find much public support. Other citizens might not be satisfied that certain cultural activities that they deem important were not supported by public funds. I explain that for these reasons, individual choices concerning the use of public funds for cultural related activities could be related to

the possibilities for tax exemption so that if an individual prefers opera to be given public funds and his/her choice is not supported by many other citizens and consequently, opera is minimally supported by public funds, he/she is given the right of tax exemption for funds he/she would use in support of the opera. This way, on the one hand, the individual choices of citizens will equally matter in public policies concerning culture. I make clear that on the other hand, those citizens who would not be satisfied with the public use of funds based on the preferences of all citizens would have the possibility to further support the institutions of their choice through tax exemptions. If under these circumstances an opera is still not valued and funded by citizens, then this would be a sad fact for many who value opera, but it would not be unjust situation. In such circumstances, if an opera can not attract possible sponsors, nor it can collect sufficient revenues from ticket sales, it will have to close. This scheme preserves the neutrality of the state, while in the same time reflects the various cultural activities important for citizens' concepts of well-being. I argue that this kind of solution regarding state support for arts can be used for tackling the question of how much support institutions of value for minority cultures deserve. Under such circumstances, small minorities will not be able to enjoy thorough set of publicly provided institutions necessary for the preservation and flourishing of their cultures. This would not be fair for it would unfairly burden the rest of the population into fulfilling this task. On the other hand, the preferences of members of minority cultures would not be disregarded. In the rest of the chapter I further elaborate on this topic bringing real life examples.

In the next by last chapter, I deal with the specific demands for minority rights taking examples from throughout the world. Here, I discuss a typology of minority rights claims developed by Jacob Levy. Clearly, different minorities demand support for different policies of liberal national building. Although the concrete spectre of policies adopted would necessarily depend on local peculiarities, the demands of minorities would generally include policies such as the following: public assistance for the education in the language and culture of the minority in addition to the study of the dominant language(s) and history; support for cultural institutions, libraries, museums, theatres, dance, musical or other artistic groups, programs for public TV and radio; the legal acceptance for the different customs and practices of minority groups and, thereby, for public and private entities; and state support of for the life prospects of the historically long time under-privileged and under-educated citizens of minority nationality. Furthermore, public symbols, such as the design of the personal identification documents, the names of the streets and cultural monuments, the choice of the public holidays and anniversaries, the national flag, the anthem, and the coat of arms, and the public 'spaces', such as the city squares, streets and parks should be accommodated to the needs of all the citizens of the polity. I point out that some of these demands will not be justifiable from a liberal perspective. In this chapter, I delineated those demands for minority rights that can not be accommodated within a liberal egalitarian framework.

Overall, this publication brought the liberal egalitarian theory in touch with the contested process of nation-building. I explained how are the attempts to provide theoretical defence for minority rights, of Will Kymlicka, insufficient. Based on close reading of Kymlicka, I developed two arguments in favour of a 'liberal nation-building', a process which takes into account the interest of ethnocultural minorities. I elaborated the scope of these minority rights as well as exactly what kind of minority rights demands are sustainable within such a process and which are not. Liberal nation-building, based on egalitarian principles allows for allocation of a specific amount of public support for activities of the members of the minority cultures.

However, it must be noted that, although liberal egalitarianism supports minority nation-building, the resources provided for this process are not unlimited but dependent on equal consideration of all citizen's preferences.



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