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NATIONAL CULTURE IN POST-NATIONAL SOCIETIES

ANGEL R. OQUENDO*

I. INTRODUCTION

THE history of nationalism has all too often been gruesome. All over the world, nationalist movements have now and again unleashed terror and unspeakable injustices. The most extreme case is perhaps that of the Nazi dictatorship in Germany. Therefore, it is not surprising that both the right and the left vehemently repudiated national sentiment as either “a pathological inflammation of wounded national consciousness” or as “a form of false consciousness,” in the words of Isaiah Berlin.¹ This categorical attitude has changed somewhat in the last five decades. During the worldwide anti-colonial campaign of the 1950s and 1960s, commentators began to accept that national pride could be, so to speak, “politically correct” when it contributed to motivating a people to undertake a liberation struggle against imperialist oppression. In the 1980s and 1990s, the notion that in a multicultural society the protection of national identity is part of the right of minorities to “recognition” made considerable headway, particularly in the Anglo-Saxon world.² International law has also upheld both the national self-determination claim of former colonies and the right of minorities to cultivate their national heritage within the larger state to which they belong.³

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1. ISAIAH BERLIN, *Nationalism: Past Neglect and Present Power*, in *AGAINST THE CURRENT: ESSAYS IN THE HISTORY OF IDEAS* 333, 339 (H. Hardy ed., 1981) (discussing historic predictions of nationalism’s nature abatement).

2. Within analytic philosophy, Isaiah Berlin was already employing the Hegelian notion of “recognition” to formulate a right of groups back in 1969. See ISAIAH BERLIN, *FOUR ESSAYS ON LIBERTY* 157-58 (1969) (“I may feel unfree in the sense of not being recognized as a self-governing individual human being; but I may feel it also as a member of an unrecognized or insufficiently respected group . . .”). Yet, it was Charles Taylor who popularized this use in his 1992 essay *The Politics of Recognition*. See generally CHARLES TAYLOR, *MULTICULTURALISM AND THE POLITICS OF RECOGNITION* (1992).

3. See Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514, 15 U.N. GAOR, 15th Sess., Supp. No. 16, at 66, U.N. Doc. A/4684 (1960) (declaring fundamental right of self-determination); Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities, G.A. Res. 47/135, U.N. GAOR, 47th Sess., Supp. No. 49, at 211-12, U.N. Doc. A/47/49 (1992) (establishing cultural rights of minorities); see also HURST HANNUM, *AUTONOMY, SOVEREIGNTY, AND SELF DETERMINATION: THE ACCOM-*

Thus, political philosophers and protagonists are now ready to attribute teleological as well as deontological value to national sentiment. On the one hand, they have come to realize that national sentiment may instrumentally advance valuable ends, such as decolonization or improving a minority's self-esteem.⁴ On the other hand, they have evolved to the view that the cultivation of national sentiment is something colonized peoples and national minorities are entitled to as a matter of right. Of course, from this standpoint, these groups not only have a right to feel, in some general way, that they constitute a nationality, but they are also entitled to act as a national group, that is, to construct a national culture.

This concept has important practical consequences not only for individuals and groups, but also for the state in which they live or which they purport to create. After all, citizens often exercise their rights against the state and almost always depend on the state for enforcement. This paper, accordingly, focuses on the obligations of the state vis-à-vis the right of individuals and groups to develop a national culture. Should the state simply adopt a policy of non-interference? Should it provide some assistance to its citizens in the exercise of this right? Or, should the state make the right its own and join its citizens in the promotion of a national culture for all?

Obviously, these questions are not just the stuff of armchair philosophy. They can give rise to enormous controversy, particularly in multicultural societies. They can not only lead to profound discontentment among minority or dissident groups; but these questions actually have the potential to rip apart even wealthy nations with a strong commitment to democracy and human rights. They have created painful divisions in countries, such as the United States, Canada and Belgium and brought insane, endemic violence to others, such as Spain, France and the United Kingdom. In less affluent societies with precarious democratic and constitutional institutions, the virulently nationalistic state, which inspired the previously mentioned aversion to national sentiment generally, may show its face. The end result may be utter devastation. Rwanda, Yugoslavia and Indonesia provide cases in point.

Before I start the discussion of these all too consequential matters, a terminological comment is in order. This paper exploits the ambiguity of the word "national." The term often refers to a country as a whole. Mexican national traits are, in this sense, those of the people who live in Mexico. The underlying assumption is that within the Mexican borders a distinct nation exists. "National" may also point to a national subgroup within a society. For example, the Kurdish national language is that spo-

MODATION OF CONFLICTING RIGHTS 33-46, 499-501 (rev. ed. 1996) (discussing U.N. recognition of right to self-determination and rights of minorities); WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP* 5, 27 (1995) (discussing issues of minority rights and self-determination in international law).

4. See Yael Tamir, *LIBERAL NATIONALISM* 4 (1993) (arguing nationalism has inspired struggle against colonialism and imperialism).

ken by the Kurdish minority in Turkey, Iraq, Iran or Syria. Horace Kallen draws on both dimensions of the concept when he describes the United States "as a 'nation of nationalities.'"⁵ What Kallen means is that the United States is a country encompassing various communities divided by ethnicity.

In this piece, "national culture" will be used to describe both an entire country and the plurality of ethnic subgroups. Thus, it is possible to reformulate the questions posed previously as follows. Should the state be fully post-national, that is, should it refuse to support in any way the culture of its national minorities *and* renounce the notion of a single national culture for all citizens? Or may the state subsidize traditionally disadvantaged minorities as a way of reparation or subsidize all ethnic groups on impartial grounds? May the state, under certain circumstances, advance a national culture as that of the entire society and thus abandon, to some extent, its post-nationalism?

In this article, I will first discuss a liberal construction according to which the state may, at most, erect a framework that allows individuals to cultivate their particular national roots on their own. Thereafter, I will contemplate a pluralist model that declares that the state apparatus should value and actively promote the existence and co-existence of various national subgroups, without favoring any one of them. Finally, I will argue that under certain circumstances, the state may (and should) give up its neutrality and provide special support for a single national culture for the entire society. This last paradigm, which I will denominate (for lack of a better term) "progressively nationalist," emerges from the limitations of post-nationalism and points, not back to the primitive national state, but rather to a post-post-national state of sorts. I will, accordingly, contend that this option requires opening up space for cultural difference and dissidence.

My method will not consist in considering and discarding possibilities on an almost random basis until the true one appears. Instead, I will start with an extremely appealing concept, expose its deficiencies, and advance to a new one that both incorporates the virtues and rectifies the failings of the predecessor. The final standpoint will, in turn, dialectically include elements selected during the antecedent stages.

This last position I will also develop on a step-by-step basis, discussing the four conditions that progressive nationalism requires for an official defense of the national culture. First, the national culture must be under threat. Second, the menace must stem from an internal coordination problem faced by the citizens or from an external obstacle to cultural development. Thus, the state would lead a collective effort in cases where exclusively individual action would be insufficient. Third, the state must narrowly tailor its protective measures to the extent and kind of danger at

5. MICHAEL WALZER, WHAT IT MEANS TO BE AN AMERICAN 26 (1992) (quoting Horace M. Kallen).

issue. Finally, cultural dissidents and minorities must have enough room left to devote themselves to alternative cultural options.

This four-pronged test may sound somewhat unwieldy at first. Yet, it will prove to be relatively straightforward when applied to concrete cases. At any rate, it is key to have independent tribunals to determine, not only competently, but also objectively, whether the state has met these four prerequisites.

I will now raise five brief points that will help clarify my exposition or perhaps obscure it in an interesting way. First, there is no exact definition of the twin terms "nation" and "national culture". Although considerable elaboration is possible, the interpretation of both these notions must ineluctably remain loose.⁶ I understand a nation as a group of persons who plausibly perceive themselves as a community sharing traditions, convictions, history, language, territory and/or an ethos.⁷ None of these points of commonality are a *sine qua non* requirement for the classification of a group as a nation.⁸ Nations qualify as such insofar as they display some of these convergence nodes and generally bear a "family resemblance" to other nations.⁹ A national culture, in turn, refers to the areas of human activity that identify this kind of collectivity, such as music, art, cuisine or politics.¹⁰ This most tentative understanding will suffice in order to move

6. See KYMLICKA, *supra* note 3, at 83 ("Cultures do not have fixed centres or precise boundaries."); DAVID MILLER, ON NATIONALITY 85 (1995) ("Nations tend to attribute to themselves a greater degree of cultural homogeneity than their members actually display."); TAMIR, *supra* note 4, at 58 (claiming "concept of 'nation' is [] elusive").

7. See OBRAS ESCOGIDAS DE GUILLERMO BONFIL, IDENTIDAD NACIONAL Y PATRIMONIO CULTURAL: LOS CONFLICTOS OCULTOS Y LAS CONVERGENCIAS POSIBLES (IV) 397, 398 (Mexico City: Instituto Nacional Indigenista, 1995).

8. See TAMIR, *supra* note 4, at 65 (arguing there is no set number of shared characteristics necessary to classify group as nation).

9. See LUDWIG WITTGENSTEIN, PHILOSOPHISCHE UNTERSUCHUNGEN § 67 (1967); LUDWIG WITTGENSTEIN, PHILOSOPHICAL INVESTIGATIONS § 67 (G.E.M. Anscombe trans., Blackwell Pub. rev. 3d ed. 2001) (1953) (characterizing similarities within concepts as "family resemblances"). The various nations—like the various games examined by Wittgenstein—do not share one essence, there is no particular characteristic or a group of characteristics they all would share. On the contrary, one nation may have some aspects in common with a second one but not others, while the points of convergence and divergence with a third one may be different. These different nations are thus like the members of a family. As Wittgenstein points out, not all family members have the same nose or the same build, some resemble others in the smile, and still others in the personality. See *id.* (same). They are thus all interrelated without converging on a particular feature, "for the various resemblances between members of a family: build, features, colour of eyes, gait, temperament, etc., etc. overlap and criss-cross. . . ." *Id.*

10. See OBRAS ESCOGIDAS DE GUILLERMO BONFIL, *supra* note 7, ("definitions of ethnic groups, peoples, or nations . . . include in one way or another a reference to a common culture as a necessary condition for the existence of those longstanding collectivities"); see also MILLER, *supra* note 6, at 85 (defining national culture as "set of overlapping [] characteristics"). Geertz identifies culture with "webs of significance." Clifford Geertz, *Thick Description: Toward an Interpretive Theory of Culture*, in THE INTERPRETATION OF CULTURES 5 (1973) (introducing new concept of culture).

on to the philosophical question of how far a state may go in supporting national subgroups or in embracing a national culture for the country as a whole. As my argument unfolds, the meaning of these two concepts will become more concrete.

Second, a national group normally differs from an ethnic group in that it has greater cultural convergence and territorial concentration; a national group can also formulate a more plausible claim to political autonomy.¹¹ In Belgium, for instance, Germans constitute a national group, whereas Turks are an ethnic group. Of course, this definition is somewhat arbitrary. Moreover, the dividing line is not entirely precise. Nevertheless, separating the two categories is useful when it comes to establishing the rights of these groups. This article deals primarily with national groups, but many of the arguments are also relevant to ethnic groups.

Third, one should not lose sight of the way in which the concepts of state and nation relate to each other. A state represents a political (usually sovereign) community. To take states as nations is to assume that the represented polities constitute nations. This is the underlying premise of the appellation "United Nations" for an organization in which each state purports to act on behalf of a particular nation.¹² Some political communities are nations only in an extremely general sense. They are collections of various and sundry ethnic subgroups, which share (at most) a political culture, a set of political principles or a broad commitment to pluralism.¹³

Fourth, virtually all countries are "multicultural" to some extent.¹⁴ In other words, different cultural minorities subsist within the established frontiers. When the state posits a particular "thick" national culture for the entire country, it usually focuses on a particular (almost invariably ma-

He explains that "culture is not a power, something to which social events, behaviors, institutions, or processes can be causally attributed; it is a context, something within which they can be intelligibly—that is, thickly—described." *Id.* at 14.

11. See KYMLICKA, *supra* note 3, at 10-26, 63-64, 67-68, 79-80, 95-98, 101 (drawing distinction between ethnic and national groups).

12. See DIETER HENRICH, NACH DEM ENDE DER TEILUNG: ÜBER IDENTITÄTEN UND INTELEKTUALITÄT IN DEUTSCHLAND 72 (1993); TAMIR, *supra* note 4, at 58-59 (asserting that using "nation" and "state" interchangeably often leads to confusion).

13. These communities actually are not communities in a Rawlsian sense, inasmuch as their members do not share a comprehensive conception of the good. See JOHN RAWLS, POLITICAL LIBERALISM 40 n.43, 42, 146 n.13 (1993) (rejecting political society as within definition of community).

14. Will Kymlicka is right to point out that ever-increasing multiculturalism is part of the experience of virtually all modern societies. See KYMLICKA, *supra* note 3, at 1, 6, 10 (noting cultural diversity throughout countries around world); see also JÜRGEN HABERMAS, THE INCLUSION OF THE OTHER: STUDIES IN POLITICAL THEORY 117-20 (Ciaran Cronin & Pablo De Greiff eds., MIT Press 1998) (suggesting that increasingly pluralistic societies can be held together by political culture); HAN-NUM, *supra* note 3, at 26, 50 (claiming that few and only smallest states are homogeneous); TAMIR, *supra* note 4, at 3, 10 (arguing homogeneous states are not possible); MICHAEL WALZER, ON TOLERATION 25 (1997) (asserting rarity of homogeneity in modern societies).

jority) segment of the society. Even if the state tries to be as inclusive as possible, it typically excludes certain elements in order to give some coherence to the concept of a national culture.¹⁵ Claims to legitimacy will typically face a strong challenge under these circumstances. The issue is whether the state should put itself in such a bind. The narrowly post-nationalist response is simply that it should not, no matter what. In contrast, the progressively nationalist answer will be that it may put itself in such a bind so long as it meets a series of strict conditions.

Lastly, the state is the agent of its citizens and obviously must defend their "national" interests. Thus, Russia's trade officials must stand up (at home and abroad) for Russian companies and businesses, including those in the business of culture—e.g., film producers, music distributors and art dealers. My attention will focus not on this kind of endeavor, but rather on the government's specific engagement in favor of a national culture. Can the Russian state legitimately support, at home and abroad, what it asserts to be truly Russian cultural activity? May it discriminate between those culturally active citizens who pass the national litmus test and those who do not? Should it subsidize non-citizens, who do not even live in the country, but who contribute to what it considers genuinely Russian folklore?

So much for preliminary caveats, at least for the time being. I will now commence my examination of the three models and proceed down the anticipated path. This inquiry will force me to shed further light (and inevitably cast additional shadows) not only on my reading of what a nation and national culture are, but also on my entire conceptual perspective. The symbiotic relationship between concept and analysis thus becomes evident. I first suggested that the precision of certain key notions would render my investigation more effective. My point now is that upon their application to a concrete problem, these concepts as well as their import will become more lucid.

II. A LIBERAL CONSTRUCTION

One could interpret the national state from the standpoint of liberalism as defined by philosophers such as John Rawls and Ronald Dworkin.¹⁶ These liberal philosophers assert that basic political and legal institutions must rest on a relatively formal conception of the right and remain neutral with respect to the various substantive conceptions of the good.¹⁷ For example, the government has a duty generally to guarantee

15. See Geertz, *supra* note 10, at 17. ("Cultural systems must have a minimum degree of coherence. . . .").

16. See generally RAWLS, *supra* note 13 (discussing political liberalism); Ronald Dworkin, *Liberalism*, in A MATTER OF PRINCIPLE 181 (1985) (proposing theory of liberalism).

17. See Héctor Díaz-Polanco, *Los dilemas de la diversidad*, XII CONGRESO INTERNACIONAL. DERECHO CONSUETUDINARIO Y PLURALISMO LEGAL: DASAFÓS EN EL TERCER MILENIO (II) 1009, 1011-12 (Santiago: Universidad Chile/Tarapacá, 2000).

religious freedom without favoring any specific religion or vouching for its truth.¹⁸ The model under consideration in this section applies this same policy to nationality matters.¹⁹ Accordingly, the state should act impartially and create a space in which all nationalities with their corresponding visions of the good life can, in principle, survive as equals.²⁰ From this standpoint, the government allows individuals to embrace the values of their respective national subgroups. Yet, it does not take a position as to the worthiness of any of these ethnic ways of life. Nor does it subsidize any of them. It is for the individual or the national subgroup in question to value and invest in them.

This approach is singularly attractive in a society within which numerous relatively segregated subgroups, divided by national origin, subsist. By refusing to side with any of its national communities, the state purports to command the allegiance of all of them. It must, consequently, stay away from any nationalistically charged agenda, which might alienate some of them. The state has to move, in other words, towards a post-national political paradigm.

The liberal state thus avoids having to define the nation on a genealogical or imaginary basis. Moreover, it does not have to establish what the national culture is all about, i.e., what falls within or without the concept. Nor does it have to specify which of its national subgroups are genuine, who their legitimate members are or what their shared culture consists of. The burden is on the individuals who want to keep their particular group

18. Rawls contends that liberalism emerged as a response to the issue of religious pluralism. See RAWLS, *supra* note 13, at xxiv ("[T]he historical origin of political liberalism (and of liberalism more generally) is the Reformation and its aftermath, with the long controversies over religious toleration in the sixteenth and seventeenth centuries.").

19. Rawls insinuates that, although he focuses primarily on the issue of religious toleration, his political liberalism bears on other basic problems such as "race, ethnicity, and gender." *Id.* at 154-58 (arguing that political conception of justice need not be comprehensive); see also KYMLICKA, *supra* note 3, at 3 ("Many post-war liberals have thought religious tolerance based on the separation of church and state provides a model for dealing with ethnocultural differences as well."); *id.* at 30-31 (addressing concerns of minorities in protecting their cultural practices); Michael Walzer, *Pluralism in Political Perspective*, in THE POLITICS OF ETHNICITY 1, 6-11 (Stephan Thernstrom et al. eds., 1982) (discussing evolution of pluralism in America); Michael Walzer, *States and Minorities*, in MINORITIES: COMMUNITY AND IDENTITY 219, 219-27 (C. Fried ed., 1983) (examining coexistence of minority groups in various political structures).

20. This conception overlaps with what Charles Taylor denominates procedural liberalism, as well as with Joseph Raz's liberal policy of non-discrimination. See JOSEPH RAZ, *ETHICS IN THE PUBLIC DOMAIN: ESSAYS IN THE MORALITY OF LAW AND POLITICS* 158 (1994) (discussing toleration and non-discrimination); CHARLES TAYLOR, *RECONCILING THE SOLITUDES* 125 (1993) (discussing modern societies' need to balance government as "service institution" as well as institution of identification). Raz explains that "under a regime of scrupulous non-discrimination a country's public services, its education, and its economic and political arenas are no longer the preserve of the majority, but common to all its members as individuals." Raz, *supra*, at 158.

alive to search for definitions. They must come up with an interpretation that is persuasive on its own, because the state will allow them neither to coerce fellow citizens into joining forces with them, nor to prevent others from coming up with alternative conceptions.

The liberal state is not simply able to appease nationalist factions and escape hairy terminological disputes. More significantly, it is in a position to recognize that there is reasonable disagreement with respect to nationality matters and to grant its citizens the freedom to make their own choices.²¹ Its claim to legitimacy will be stronger to the extent that it embraces the former philosophical insight and guarantees the latter liberty.

Individuals uphold this liberal approach not simply for strategic reasons. In other words, they do not support it just because it allows them to live in peace and develop their culture. They actually are able to regard the principles of the collectivity as reasonable and as part of the comprehensive doctrine that they and their subgroup embrace. Accordingly, the polity is the seat of a Rawlsian "overlapping consensus."²²

The ideology of the French Revolution already contained, implicitly, this post-national idea of the nation-state.²³ Yet, the notion attained a fuller development later in multicultural societies such as the United States.²⁴ The post-national ideal is an extension of the principle of separation of church and state. It postulates that individuals ought to form a

21. See RAWLS, *supra* note 13, at 135 ("[P]olitical liberalism supposes that there are many conflicting reasonable comprehensive doctrines with their conception of the good, each compatible with the full rationality of human persons.").

22. See *id.* at 133-72 (justifying possibility of political liberalism on existence of overlapping consensus of reasonable comprehensive doctrines).

23. See JÜRGEN HABERMAS, BETWEEN FACTS AND NORMS: CONTRIBUTIONS TO A DISCOURSE THEORY OF LAW AND DEMOCRACY 463-90 (William Rehg trans., MIT Press 1996) (1993) (examining French Revolution's significance on modern societies); see also HABERMAS, *supra* note 14, at 223-24 (stating, "The nationalism of the French Revolution allied itself with the universalistic principles of the democratic constitutional state . . ."); JULIA KRISTEVA, NATIONS WITHOUT NATIONALISM 6, 40, 46 (1990) (Leon S. Roudiez trans., Columbia Univ. Press 1993) (tracing idea of nation to French Revolution); WALZER, *supra* note 14, at 38 (finding France's high degree of culture assimilation mostly due to "revolutionary construction of a republican state"). Kristeva associates this general post-national ideal with Montequieu. See KRISTEVA, *supra*, at 31-32 (commenting that "Montequieu invites us to respect by thinking of the social body as a guaranteed hierarchy of *private rights*").

24. Habermas himself identifies the post-national model with the United States, as well as with Switzerland, stating:

As the examples of multicultural societies like Switzerland and the United States demonstrate, a political culture in which constitutional principles can take root need by no means depend on all citizens' sharing the same language or the same ethnic and cultural origins. A liberal political culture is only the common denominator for a *constitutional patriotism* (*Verfassungspatriotismus*) that heightens an awareness of both the diversity and the integrity of the different forms of life coexisting in a multicultural society.

HABERMAS, *supra* note 23, at 500; see also HABERMAS, *supra* note 14, at 113 (describing United States as example of successful republican nation-state without culturally homogenous population).

polity as citizens, entirely independently of their particular religion or ethnicity.²⁵ These individuals should unite through a common political culture, in other words, through a series of shared political principles that generally define democracy, human rights and the rule of law.²⁶ They should build a community not of destiny, but of will that inspires constitutional patriotism instead of nationalism, to use Dolf Sternberger's terminology.²⁷

In the United States, politicians and intellectuals have regarded the federal Constitution as the basis of social union, and the principles established therein as the core of civic identity. Within this vision, the government does not have to repress or homogenize ethnic minorities, it may reasonably incorporate them.²⁸ Political philosophy has refined these ideas, which were already part of the common ideological currency, into the liberal post-nationalism I have been reconstructing.

The liberal state distances itself from issues of nationality at two levels. At the level of the entire society, the liberal state does not recognize a thick national identity or reduce that identity to a set of political principles. Thus, it does not force a substantive national culture on all citizens. At the level of particular ethnic groups, the liberal state does not interfere with cultural endeavors. Instead, communities may devote themselves to their peculiar cultures. The communities may devote or express their cul-

25. See Benjamín Arditi, *El reverso de la diferencia*, EL REVERSO DE LA DIFERENCIA: IDENTIDAD Y POLÍTICA 99, 120 (Benjamín Arditi ed., Caracas: Ed. Nueva Sociedad 2000) ("[I]n modern societies [citizenship] implicitly recognizes the diversity of those who exercise it . . .").

26. See HABERMAS, *supra* note 23, at 500-01 (providing that democratic state citizenship need not be rooted in national identity of people, but demands socialization of all state citizens in common political culture, independent of various diverse social cultures); see also *id.* at 506, 508, 514-15 (explaining that political acculturation does not demand complete socialization within national culture); HABERMAS, *supra* note 14, at 117-18, 144-45, 176-77, 225-26 (explaining that political integration of citizens ensures loyalty to their common political culture); KRISTEVA, *supra* note 23, at 40 (stating, "[T]he French Republic, is achieved [through] a legal and political pact between free and equal individuals."); KYMLICKA, *supra* note 3, at 23-24 ("National membership should be open in principle to anyone, regardless of race or colour, who is willing to learn the language and history of the society and participate in its social and political institutions.").

27. It is Dieter Henrich who attributes the term constitutional patriotism to Dolf Sternberger. DIETER HENRICH, NACH DEM ENDE DER TEILUNG: ÜBER IDENTITÄTEN UND INTELLEKTUALITÄT IN DEUTSCHLAND 74 (1993). Jürgen Habermas popularized the expression. See HABERMAS, *supra* note 14, at 118-19, 225-26 (describing creation and use of "constitutional patriotism" within Germany and United States); see also KYMLICKA, *supra* note 3, at 13 (distinguishing "'patriotism,' the feeling of allegiance to a state, from national identity, the sense of membership in a national group"); Francesc Carreras, *Patriotismo sin tribu*, EL PAÍS DIGITAL (Nov. 11, 2001); Guillermo Hoyos Vásquez, *Multiculturalismo y democracia en América Latina*, CONGRESO LATINOAMERICANO SOBRE FILOSOFÍA Y DEMOCRACIA 289, 302-03 (Santiago, LOM 1997).

28. See KYMLICKA, *supra* note 3, at 23-24 (suggesting that United States' governmental system allows immigration and incorporation of "national minorities . . . regardless of race or colour").

ture in public with private funds; however, these communities should not expect state subsidies of any sort.²⁹

Accordingly, there should be no official national music, literature or cinema. While national traditions may exist, they must fall solely within each of the subgroups. For the United States, the implication is that the government ought not to declare an official national art. At most, a truly "national" artistic genre may exist only at the level of the particular ethnic communities, such as those composed of African-Americans, Chinese-Americans, Mexican-Americans or Italian-Americans. The liberal model under consideration leaves the members of the national groups to their own devices in developing their cultural forms. It forbids state subventions as well as inculcation through the public schools.

Of course, the United States is far from a full realization of this post-national ideal.³⁰ Within the citizenry, constitutional patriotism has not yet completely replaced its nationalistic counterpart. Many citizens still believe that their civic identity is a function of their commitment not only to the Bill of Rights and the rest of the Constitution, but also to their particular language, religion, ethnic origin or race. The state, in turn, all too often embraces symbols or adopts programs that reflect a partiality toward specific linguistic, religious, ethnic or even racial perspectives. For example, dollar bills, official seals and governmental rituals still embody references to a Christian God. Moreover, even now, the government conducts its business almost exclusively in English, exercises most of its power through white Anglo-Saxon men, and has not effectively advanced the political, economic and social inclusion of disadvantaged national groups. Thus, the United States still has a long way to go.

The United States, in a sense, however, will always miss this mark, as would any other country. Liberal post-nationalism is ultimately an unattainable goal. Societies typically emerge as the people of a particular territory start imagining themselves as a coherent ethnic community. Almost inevitably, the views of society's pioneers color the political and legal institutions that emerge.³¹ As other peoples arrive, they frequently feel like outcasts and push for change. Even if the polity reacts responsively and

29. See *id.* at 4-5 (describing liberal state's treatment of minority groups when they outwardly express their cultural allegiance to greater society).

The members of ethnic and national groups are protected against discrimination and prejudice, and they are free to try to maintain whatever part of their ethnic heritage or identity they wish, consistent with the rights of others. But their efforts are purely private, and it is not the place of public agencies to attach legal identities or disabilities to cultural membership or ethnic identity.

Id. at 3-4.

30. See KRISTEVA, *supra* note 23, at 8 (suggesting that past United States' "nationalism established [lasting] hierarchies within itself").

31. See GONZALO AGUIRRE BELTRÁN, OBRA POLÉMICA 74 (Mexico City, Sepinah 1975); WALZER, *supra* note 14, at 25 (stating that national groups seek statehood solely to use political apparatuses in order to control means of production).

responsibly, attempting to purge its nationalistic biases, it will never be completely successful. Residue from its ethnic past will tend to conspicuously remain in the official language.

Will Kymlicka maintains that because state structures are ineluctably impregnated with a particular national standpoint, any attempt to analogize the issues of religious and national neutrality is highly misleading.³² His core contention is that the government may be impartial when it comes to religion, but not when it comes to nationality.³³ Thus, legal and political institutions will have an inevitable bias in favor of the dominant ethnic group.

It would be a mistake to overdraw this point. Official impartiality is ultimately as unattainable in religious as in national matters. The cracks in the wall between church and state in the United States and other Western democracies go beyond the sporadic religious references in official emblems and rites. Furthermore, they are not merely the product of aberrations or perversions of the true governmental mission. The very idea of a secularized state originates specifically with the Reformation and the ensuing protracted debate on religious toleration.³⁴ Therefore, the state unavoidably reflects the particular religious perspective from which it emerges.

The fact that it is not entirely attainable does not automatically render non-confessional and post-national liberalism useless. Post-national liberalism may still provide a crucial benchmark. It may not establish the exact form, but rather the direction that the state may take. It may point to a horizon or a utopia,³⁵ rather than a concrete destination.³⁶ Thus, the closer the state structures come to the overarching conception, the more legitimate they will be. Just as Saint Ignatius never expected moral perfec-

32. See KYMLICKA, *supra* note 3, at 111 ("[L]iberals say that just as the state should not recognize, endorse, or support any particular church, so it should not recognize, endorse, or support any particular group or identity . . . [b]ut the analogy does not work.").

33. See *id.* (explaining that state may choose not to recognize particular national religion, "[b]ut the state cannot help but give at least partial establishment to a culture when it decides which language is to be used in public schooling, or in the provision of state services").

34. See RAWLS, *supra* note 13, at xxv-vi, 154 (describing development of secularized state).

35. Utopia, according to Eduardo Galeano, "lies on the horizon. . . . I walk ten steps and the horizon slips away ten steps. No matter how much I walk, I will never reach [the utopia]. What is the utopia for? It is just for that: for walking." EDUARDO GALEANO, *LAS PALABRAS ANDANTES* 310 (1993).

36. When Rawls argues against the contention that an overlapping consensus is Utopian, he only suggests that "there are not sufficient political, social, or psychological forces . . . to bring about an overlapping consensus." See RAWLS, *supra* note 13, at 158 (depicting steps required to meet constitutional consensus). He appears ready to concede that "a full overlapping consensus is never achieved but at best only approximated." *Id.* at 165 (recognizing that several social factors exist in creating full consensus, thus shared political culture will not create complete consensus).

tion, only improvement over time, secularism and post-nationalism may not demand a full realization of their norms, but rather a gradual and constant approximation.

In the last decade, German philosopher Jürgen Habermas has been calling for the importation of this post-national concept into Germany, as well as other European countries.³⁷ During the debate on German reunification, Habermas proposed that Germans establish a popular assembly in order to write a new constitution. Through this deliberative process, Germans would attain the consciousness of a collective identity based on a common political (rather than linguistic, social or economic) culture.

Although the political world at that time never took this specific proposal seriously, the general idea has remained relevant in Germany, as shown by recent discussions on citizenship. At present, the federal government seems to accept that people may in principle be German irrespective of their ethnic background, as long as they commit to the German Constitution.³⁸ Moreover, Habermas and others have insisted on the relevance of this perspective to European integration.³⁹ Thus, the European Union would coalesce not through an imaginary common ethnicity or through shared economic interests, but rather through a future European Constitution.

A politically consolidated European Union would more closely resemble the liberal post-national ideal than the United States. It would not originate with a particular ethnic community, but rather with a multiplicity of national groups.⁴⁰ The union would be vividly aware of and committed to preserving its diversity, which would allow it to speak and imagine itself

37. See generally HABERMAS, *supra* note 23, at 500-15 (presenting arguments for nation-state democracy in unified Europe); HABERMAS, *supra* note 14, at 105-61 (discussing future of nation-state in Europe).

38. See Otto Schily, Speech of Federal Minister of the Interior Before the German Parliament to Introduce a Draft of a Bill to Reform the Citizenship Law (Mar. 19, 1999), available at http://www.otto-schily.de/reden/reden_g.htm (stating elements of German citizen). "Whoever respects the Constitution and its fundamental values and complies with our laws belongs amongst us. Whoever is fluent in the language belongs amongst us. Whoever wants, in his own way, to bond with the social life in Germany belongs amongst us." *Id.*

39. See WALZER, *supra* note 14, at 48-51 (arguing that shared political policy amongst European nation-states would enhance integration amongst Europeans). See generally HABERMAS, *supra* note 23, at 500-07 (asserting that political integration within Europe would lead to unification of European nations); HABERMAS, *supra* note 14, at 150-53 (reasoning that people of Europe could become "European people" through integration if there existed "a European-wide political public sphere embedded in a shared political structure").

40. See HABERMAS, *supra* note 23, at 502 ("[N]ation-states present a problem along the thorny path to European Union not so much on account of their insuperable claims to sovereignty but because . . . the political sphere has been fragmented into national units.").

in various tongues, rather than a single language.⁴¹ Nevertheless, it would run into the same impossibility; it could not attain complete post-nationalism. As previously insinuated, societies tend to hold on to their national origins, partly out of habit or conditioned reflex. Accordingly, the European Union's institutions would reflect too much the perspective of the white Christian men that control them and too little the viewpoint of its subgroups.

It is also difficult to achieve social integration solely on the basis of a political culture. Solidarity usually requires more than a common set of political principles. To some extent, social integration normally calls for a collective social culture—i.e., shared experiences, histories, traditions and ways of life.⁴² Insofar as the government bows to this reality and embraces some of these unifying features as part of the entire society's national culture, it will not be post-national. If the government were able to endorse only a very minimal national culture—drawing on the various national subgroups' standpoints—it would then be in a position to stay away from nationalism on most matters and to present itself as basically post-national. For example, the Swiss government might posit a national culture made up of what is culturally shared by its national subgroups or of a few select elements from each of the national subcultures. It would be able to profess post-nationalism credibly insofar as this overarching national culture was not all-encompassing or pervasive, but rather minimal.

III. A PLURALIST MODEL

The described liberal conception appears indifferent to the various national perspectives.⁴³ According to liberalism, national communities may devote themselves to their culture, but should not expect any government support. Pluralist critics quickly retort that the state, instead, should expressly appreciate and promote the different national cultures, as well as pluralism in general. This critique calls on the post-national state to transform or perhaps even transcend its liberal premises.

41. See *id.* at 501 ("The United States . . . is a multicultural society united by the same political culture and (at least for now) a single language, whereas the European Union would represent a multilingual state of different nationalities.").

42. See Ernesto Garzón Valdés, *Pluralidad étnica y unidad nacional: Consideraciones ético-políticas sobre el caso de México*, 46 *IBERAMERICANA* 4, 20 ("In fact, a certain degree of social homogeneity has always been considered a necessary condition for representative democracy.").

43. See RAWLS, *supra* note 13, at 150, 172 (rejecting allegation that political liberalism is indifferent to value of comprehensive doctrines). Political liberalism envelopes comprehensive religious, political or moral doctrines through its public nature, which is congruent to the considered convictions of the citizenry. See *id.* (advocating idea that shared political ideals will be shaped to run parallel with comprehensive doctrines). For an interpretation of liberalism that affirmatively values national groups, see TAMIR, *supra* note 4, at 3 (noting that "[n]ational movements are regaining popularity, and nations that had once assimilated and 'vanished' have now reappeared").

The alternative interpretation formulated from this critical perspective would allow and even require the government to subsidize the plurality of national cultural manifestations. Accordingly, the state would provide support on an equal basis to all national subgroups. It would regard the various national cultures as the patrimony of the entire polity. It would not, however, establish a particular national culture for the whole of society.⁴⁴

A pluralist government must undertake the formidable task of defining which national communities are legitimate or, at least, worthy of subvention.⁴⁵ Obviously, it would be fiscally suicidal to provide funds to all who apply. A genealogical or biological test would be not only difficult to implement, but also conceptually wrongheaded. A national group, as I intimated at the outset, consists of individuals who share not a particular genetic makeup, but rather a specific perception of themselves.

The presence of a subjective dimension does not render the definition of a national group arbitrary or imply that any categorization must blindly accept people's assertions. The pluralist state should determine whether there is any plausibility to the applicants' perception of themselves as a community having a common tradition, set of convictions, history, language, territory and/or ethos. As noted in the introduction, not all of these points of convergence have to be present. Nor is it necessary to specify how many must be at hand. The purpose of the list is to point to relevant criteria. Inevitably, there will be a judgment call determining when a group has sufficiently met enough of the criteria to receive funding.

The analysis starts with the contender's self-description and must be extremely deferential. The aim is simply to discard preposterous claims. The state does not involve itself in endless squabbles as to who qualifies and who does not. Most cases will be straightforward. There is no need to set up a permanent commission to appraise all claims.

In the United States, for example, Italian-Americans, Chinese-Americans and Mexican-Americans would easily pass this open-ended test, so would more broadly defined groups such as Latinos, African-Americans, Asian-Americans, Arab-Americans and Native-Americans. Despite the cultural heterogeneity within any such community, the members' experience on United States soil—which has often involved estrangement and oppression—has brought them together, making them vividly aware of what they have in common.

Would there be any exclusions? One can come up with absurd cases that would carry no weight at all. An example would be an association

44. This model corresponds to what Michael Walzer terms immigrant societies. See generally WALZER, *supra* note 14, at 30-35 (illustrating nation-state tolerant of all groups and autonomous in its purposes).

45. The complicated and controversial certification process of Native American tribes in the United States provides a case in point.

purporting to represent people who come from countries whose name begins with the letter "H," such as Hungary, Honduras or Haiti. It would also be possible to discard less ludicrous claims, such as one presented by people asserting to come from Padania, the "nation" that the Northern League in Italy has contrived as part of its quest for independence.

A more controversial case would be that of a group of "Euro-Americans" insisting on official support. There would be good reason to turn down such a demand. United States citizens whose ancestors come from Europe do not generally think of themselves as a distinct community within society. They also lack the required cultural commonality. Finally, their experience in the United States has not created any special bond among them. Usually those who invoke such a category do so simply as a maneuver to discredit the struggle for recognition by people of color and to rally support for a racist agenda.

This approach to pluralism seems to deploy an unfair double standard. It is more open to the national affirmations of the disadvantaged than to those of the privileged. The justification for this bias is that a group that society has singled out and discriminated against attains a special collective consciousness. Other individuals, particularly the perpetrators or beneficiaries of the wrong, usually do not coalesce into a community in the same way. If "misfortunes confer certain rights,"⁴⁶ as Voltaire declares, oppression does so even more. Conversely, those who (willingly or not) benefit from the injustice thereby acquire mostly obligations.

Once the state has acknowledged a particular group, it has to deal with the specific question of whether the activities it is considering subsidizing are legitimate cultural manifestations. Thus, it will probably have to play anthropologist in a small number of cases. The state will also have to examine the group's history and current practices to determine how the culture hangs together, as well as what that culture includes and excludes. Of course, the state will also discard interpretations of the ethical culture that clash with the political culture.

These matters are eminently polemical. Even experts disagree radically. The losing side in any such controversy undoubtedly will repudiate the final decision. Yet, much governmental action is contestable in this sense. The challenge in all such highly contested official determinations is to lay out the underlying grounds as persuasively as possible. If the state acts in a principled way, many of those who disagree will nonetheless come to respect the ultimate resolution. Of course, it is key to offer these persons the possibility of revisiting the issue in the future.

Generally, a pluralist government will be equally flexible in determining both what the components of a particular culture are, and in deciding

46. VOLTAIRE, *Candide*, in CANDIDE AND PHILOSOPHICAL LETTERS 3, 35 (Richard Aldington trans., The Modern Library ed. 1992) (1956) (illustrating that past misfortune grants future rights).

what groups of individuals constitute a legitimate national community. In most cases, it will simply accept group members' reading of what their culture is all about. The state will take a position only with respect to interpretations that are outlandish, controversial within the community or contrary to its political principles. If the state is forced to take a position, it will then have to engage in the ethnological exercise to which I have just alluded.

This kind of pluralist model raises numerous thorny questions, at least in a small number of cases. Why on earth should the state tread on such explosive terrain? Why should it risk encouraging nationalist jealousies and rivalries among its subgroups? The liberal conception thus exists as a needed alternative to the nightmarish controversies that the pluralist model creates.⁴⁷ After all, what are the purported advantages of the pluralist standpoint? How can one justify embroiling political and legal institutions in the hairy business of cultural anthropology?

One rationalization for the pluralist approach is that membership in a flourishing national subgroup contributes fundamentally to individuals' well-being.⁴⁸ A meaningful life often requires connection to and engagement within a solid, relatively familiar cultural context. Therefore, the government advances the common good by strengthening the various national subgroups within which citizens live. Of course, these groups enable their members to pursue not only individual, but also collective

47. See generally KYMLICKA, *supra* note 3, at 61 ("The belief that minority rights are unfair and divisive was confirmed, for many liberals, by the ethnic revival which rocked the United States and elsewhere in the 1960s and 1970s.").

48. See Richard Falk, *The Rights of Peoples (In Particular Indigenous Peoples)*, in *THE RIGHTS OF PEOPLES* 17, 23 (James Crawford ed., 1988) (noting that flourishing indigenous groups improve overall enlightened self-interests of entire culture); KRISTEVA, *supra* note 23, at 42 (arguing that national unity allows for sharing of cultures and abilities among subgroups to benefit all); KYMLICKA, *supra* note 3, at 102-05 (presenting idea that minority groups can pick and choose what they like from surrounding cultural groups, further enhancing good for all persons within that group); MILLER, *supra* note 6, at 85-86 (arguing in support of national self-determination); RAZ, *supra* note 20, at 174 ("While incorporating policies of non-discrimination, liberal multiculturalism transcends the individualistic approach which they tend to incorporate, and recognizes the importance of unimpeded membership in a respected and flourishing cultural groups for individual well-being."); TAMIR, *supra* note 4, at 35, 73 (noting that individuals view protection of distinct national identity they have chosen as important aspect of their well-being); Rodolfo Stavenhagen, *Los derechos indígenas: nuevo enfoque del sistema interacional*, in *ETNIA Y NACIÓN EN AMÉRICA LATINA* 141, 167 (Héctor Díaz Polanco ed., Mexico City, CNCA 1995) ("Collective rights, such as a people's right to self-determination, are a necessary condition for the full enjoyment of individual rights. . . ."); cf. RAZ, *supra* note 20, at 159 (arguing, similarly, that "policy of multiculturalism" finds support in "the belief that individual freedom and prosperity depend on full and unimpeded membership in a respected and flourishing cultural group"). But cf. Jeremy Waldron, *Minority Cultures and the Cosmopolitan Alternative*, 25 U. OF MICH. J.L. REFORM 751, 762 (1992) ("The collapse of the Herderian argument [that human beings need, rather than simply enjoy being part of a particular culture] seriously undercuts any claim that minority cultures might have to special support or assistance or to extraordinary provision or forbearance.").

goals.⁴⁹ For example, a thriving national community may not only render it easier for members to write and read fiction in their own language, but may also enable the collectivity to have a literature of its own.

The defenders of pluralism could also point out that, in addition to advancing both the communal and individual ends of their members, national subgroups may help achieve objectives of the polity as a whole, such as political participation. Citizens partake in the broader, societal political culture not individually, but rather through groups, such as unions, churches or national communities. Michael Walzer underscores this point. According to Walzer, it is *not* internal fragmentation—that is, the constant increase in the number of religious, ethnic and other subdivisions—but rather civic apathy that most threatens modern society.⁵⁰ Walzer maintains that the proliferation of societal groups, instead of fueling, may actually help diminish this apathy.

From this perspective, the state should neither constrain nor ignore, but instead should encourage societal groups.⁵¹ The civic engagement of individuals normally begins in their particular communities. Only later do they become active in the life of the society in its entirety. These associations thus enable their members to practice civic involvement.⁵² More importantly, it is usually groups, and not individuals, that participate most prominently in public institutions. Individuals live the political culture mostly through their collectivities, especially those based on national origin.

The state may also advance social integration by investing in diversity and in the various societal national subgroups. On the one hand, individuals with very different backgrounds may be able to identify with each other if they share a commitment to pluralism in general.⁵³ This phenom-

49. See MILLER, *supra* note 6, at 87-88 (illustrating need for individuals to work for benefit of collective goals of nation, at times, in order to produce common culture). In the next section, I will discuss further the idea that national groups may have collective goals, such as protecting their national culture.

50. See WALZER, *supra* note 14, at 101-12 (contending that involvement within internal subgroup will actually create stronger person, more involved with society as whole). *But Cf.* KRISTEVA, *supra* note 23, at 2-3 (asserting that accentuation of sexual, national and religious identities undermines personal freedom and increases divisiveness).

51. See Michael Walzer, *Pluralism and Social Democracy*, 45 DISSENT 47, 53 (1998) ("The singular, universal political community requires a particularistic associational life; the associations require the political framework of state power.").

52. See *id.* at 51 ("We learn to be citizens in many different associations: neighborhoods, churches, unions, professional groups, parties and movements, societies for mutual aid, and so on. The more intense our participation at this level, in these settings, the more engaged we are likely to be as citizens of the larger community."); see also WALZER, *supra* note 14, at 104 ("For it is only in the context of associational activity that individuals learn to deliberate, argue, make decisions, and take responsibility.").

53. See RAZ, *supra* note 20, at 173 ("Cultivation of mutual respect and toleration, of knowledge of the history and traditions of one's country with all its communities, will provide one element of common culture."); see also *id.* at 176

enon is analogous to that of the oft-mentioned Dutch tendency to regard tolerance as a national characteristic. On the other hand, citizens may come to see the peculiar ethnic makeup of their society as a source of pride and solidarity. They may become one through the history that brought them about and the institutions that sustain their particular kind of multiculturalism. In sum, the members of a society may come together not only through a common political culture, but also through the goal of pluralism and the belief in the worthiness of their unique multiethnic experience.

From an altogether different standpoint, it is possible to view national groups reflexively rather than instrumentally when proposing state action on their behalf. In other words, one may assert not only that these national groups are means to further the specific ends of their members and of society generally, but also that they constitute a self-standing good. This does not imply that they are mystical or absolutely sacred entities. It only suggests that they produce benefits that one may assess or perhaps even understand only internally, from the perspective of the national group. Flourishing national communities, accordingly, not only allow their members to advance pre-existing goals or the society as a whole to realize its own purposes, such as social consolidation and political participation, but also enable people to fulfill aspirations that emerge and attain value within a common national life.

From this vantage point, one gets a better grasp on the second positive dimension of national sentiment, identified at the very outset of this article: strengthening an ethnic community so that it may attain recognition implies viewing it reflexively. Recognition is not merely a generic external objective, which people seek to achieve by relying on whatever instruments they may find. It is, more precisely, a state or a status that they reach by relating to each other and to the outside world with self-respect. Further, the ultimate stage and the process leading thereto may vary dramatically from one collectivity to the next. Finally, if individuals did not belong to their particular subgroup, they would probably have no use for communal recognition and would certainly have no interest in the group's specific need for acknowledgement.

The pluralist state invokes all of these reasons to support its subvention of the national culture of existing subgroups. The state has a powerful argument if it can show that its efforts help national communities to flourish. Its claim is even stronger if the state is able to demonstrate that

("[L]iberal multiculturalism leads not to the abandonment of a common culture, but to the emergence of a common culture which is respectful towards all the groups of the country, and hospitable to their prosperity."); WALZER, *supra* note 14, at 94, 100, 102 (discussing conflict in United States between "manyness of groups and of individuals," as opposed to conflicts between different cultures); Charles Taylor, *Shared and Divergent Values*, in *OPTIONS FOR A NEW CANADA* 53, 76 (Ronald Watts & D. Brown eds., 1991).

the very survival of some of these collectivities depends on its intervention.⁵⁴ If so, a purely liberal strategy would entail serious social damage.

Although in this pluralistic interpretation, state structures cease to be indifferent with respect to national communities, official neutrality is not abandoned.⁵⁵ In general, political and legal institutions act impartially with respect to different groups and promote all of them on equal terms.⁵⁶ To invoke a trivial example, if the government were to provide funds for the parade of one national subgroup, it would have to do the same for all others.

This model allows partiality only in the context of a broader remedial effort.⁵⁷ If a national community has suffered discrimination for a long time, compensatory measures are in order.⁵⁸ The aim of the official intervention is to help overcome the objective and subjective harm done to that culture. All the same, this policy would not run counter to the equality principle. The equality principle demands equal treatment of equal cases, as well as a disparate approach when the underlying situations differ. The state would actually be discriminating if it supported a heavily disadvantaged group on the same terms as a privileged community.⁵⁹

54. Michael Walzer believes that it is not the survival of these communities, but rather their capacity to promote civic engagement, that depends on state support.

The groups will survive in any case, for they answer to profound human needs. But they won't prosper, expand, draw more people into everyday participation, help the excluded help themselves, unless there is a political decision on their behalf, unless the universal state enters into a social alliance with particularity and difference.

Walzer, *supra* note 51, at 47, 53; see also WALZER, *supra* note 14, at 111 ("Group life won't rescue individual men and women from dissociation and passivity unless there is a political strategy for mobilizing, organizing, and if necessary subsidizing the right sort of groups").

55. See WALZER, *supra* note 14, at 31 (noting in immigrant societies, "the state is, in the current phrase (and in principle), neutral among the groups, tolerant of all of them, and autonomous in its purposes").

56. This pluralism corresponds to Raz's "multiculturalism," which "requires a political society to recognize the equal standing of all the stable and viable cultural communities existing in that society." RAZ, *supra* note 20, at 159; see also WALZER, *supra* note 14, at 34 ("Given the logic of multiculturalism, state support must be provided, if it is provided at all, on equal terms to every social group."); *id.* at 32 (acknowledging that in immigrant societies, "the state is supposed to be perfectly indifferent to group culture or equally supportive of all the groups").

57. See WALZER, *supra* note 14, at 34-35 (discussing states trying to equalize resources available to each group).

58. See TAMIR, *supra* note 4, at 11 (discussing compensation as method to reduce problems faced by national and cultural minorities).

59. See KYMLICKA, *supra* note 3, at 31 ("Some people believe that public funding agencies have traditionally been biased in favour of European-derived forms of cultural expression, and programmes targeted at ethnic groups remedy this bias."); *id.* at 108 ("Many defenders of group-specific rights for ethnic and national minorities insist that they are needed to ensure that all citizens are treated with genuine equality."); *id.* at 113, 126 (concluding that all national groups need opportunity to remain distinct cultures and be afforded same protections as all other

Pluralism, like the previously discussed strict liberalism, does not embrace any of the substantive conceptions of the good associated with the various ethnic subgroups. Yet, it does value positively the existence of such communities in general and of a multiplicity of them in particular. It thus recognizes "reasonable pluralism" not merely as a fact, as liberalism does,⁶⁰ but rather as a good.⁶¹ It departs from its liberal counterpart most distinctly in its plea for official engagement on behalf of the comprehensive cultural standpoints of the various ethnic groups.

It is possible to make the comparison in different terms. This pluralist standpoint, like its purely liberal counterpart, rejects the notion of a national culture for the entire society. There is, however, a difference between the two perspectives when it comes to the national cultures of the various, particular minorities. Strict liberalism supports official distance and restraint with respect to these cultures. In contrast, pluralism demands state engagement and support for them.

The pluralist project seems to be directly applicable not only in North America, but also in contemporary European societies, such as France or Germany.⁶² These countries are becoming more and more multicultural as they receive citizens from other European countries, immigrants from developing countries and asylum seekers from the various dictatorships of the world. Pluralistically interpreted, these societies have the ability to reasonably integrate all these persons.

Any group that affirms the principles of the state's constitution may become a genuine member of the society and receive official support in its cultural endeavors. Within this picture, society may not give preference to

groups); Bruce Ackerman, *Should Opera Be Subsidized?*, 46 DISSENT 89, 90 (1999) (providing example of appropriate unequal state subsidy).

I can imagine cases in which selective cultural subsidies may be justified without disparaging the equal standing of others. Consider, for example, the case of a subordinated minority, which has been condemned for generations to crushing injustice and cultural suppression. In such a case, there is everything to be said for a special state fund aimed at restoring grievously damaged cultural institutions. Rather than offending the equality of citizens, such a fund reaffirms this core commitment of the liberal state.

Id.

60. Rawls explains that "political liberalism assumes the fact of reasonable pluralism as a pluralism of comprehensive doctrines, including both religious and nonreligious doctrines." RAWLS, *supra* note 13, at xxiv; *see also id.* at 24 n.27, 36, 135, 144 (explaining nature and concept of reasonable pluralism).

61. *See* Hoyos Vásquez, *supra* note 27, at 300 ("[In Rawls,] the recognition of diversity is reasonable—I would say happy—because we can consider such pluralism as a good, not as a lesser evil.").

62. Michael Walzer believes that his immigrant society model applies to France. *See* WALZER, *supra* note 14, at 37-40, 62-63, 73-74, 78 (discussing model in relation to France). "But American liberalism is culturally neutral in a way that French republicanism cannot be." *Id.* at 74. It is perhaps due to this limit on cultural neutrality that Walzer believes France is not a fully pluralist society. *See id.* at 38 (discussing France as non-pluralist society).

the majority's cultural perspective. It should favor only disadvantaged minority groups. By the same token, the European Union would have to promote all its nationalities equally or perhaps favor historically oppressed national groups, such as Basques or Corsicans.⁶³

The post-national project, interpreted not only liberally, but also pluralistically, is undoubtedly appealing. It offers the prospect of durable peace and an authentic integration in ethnically heterogeneous societies,⁶⁴ particularly in those societies in which there is a potentially overwhelming majority culture. It is, therefore, not surprising that many intellectuals have sought to generalize this idea and apply it to not only all states, but also to all political units.⁶⁵ Those who favor this position believe that political and legal institutions should focus principally on a political culture and should be neutrally supportive of all nationalities.

IV. A PROGRESSIVE PARADIGM

Under certain circumstances, not only a compensatory, but also a partial official commitment to the national culture may be necessary. This kind of engagement may be in order when that culture is in peril. Charles Taylor asserts that Quebec provides a case in point.⁶⁶ Many Quebecois believe that their province's political and legal institutions should strongly support French Canadian culture in order to preserve it from extinction or from permanent damage.⁶⁷ There is a long history of oppression of that culture and a practically irresistible assimilation pressure, which stems not only from Anglo-Saxon Canada but also from the United States.

63. See generally *id.* at 48-51 (acknowledging oppression of several European minority groups).

64. See generally HABERMAS, *supra* note 14, at 111-17, 129-40, 159-60 (discussing nature of this new form of social integration).

65. In fact, when Habermas proposes extending post-nationalism to Europe and to other parts of the world, he has a pluralist version in mind, along the lines I have sketched in this section. For a discussion of the extension of post-nationalism, see *supra* note 64 and accompanying text.

66. See TAYLOR, *supra* note 20, at 55 ("in Quebec during the last two centuries," its culture has been "menaced"); *id.* at 56 (referring to Quebecois as "small people whose language and culture have been so beleaguered for so long"); see also WALZER, *supra* note 14, at 44-47 (discussing Quebecois problems in securing their culture). Allen Buchanan, however, maintains that it is "quite controversial" to assert that Quebec's "culture is really in peril." ALLEN BUCHANAN, *SECESSION: THE MORALITY OF POLITICAL DIVORCE FROM FORT SUMTER TO LITHUANIA AND QUEBEC* 161 (1991).

67. Taylor believes that French Canadians as well as aboriginal peoples were involved in a similar quest for cultural survival within the constitutional scheme proposed in 1982. "Here what was at stake was the desire of these peoples for survival, and their consequent demand for certain forms of autonomy in their self-government, as well as the ability to adopt certain kinds of legislation deemed necessary for survival." TAYLOR, *supra* note 2, at 52; see also TAYLOR, *supra* note 20, at 126 ("It is clear, at least in our society, that one cannot conceive of a Quebec state that would not be called on to defend and promote French language and culture, whatever the diversity of our population.").

Under such conditions, the province's government has a duty to protect the national culture.⁶⁸

In a way, this kind of cultural policy is simply an extension of the pluralist efforts in favor of a disadvantaged group, which is now a menaced majority (rather than minority) community. A crucial difference is that the state not only provides support to redress past discrimination, but also identifies completely with and acts partially towards a particular culture. The preservation and prosperity of the relevant cultural traditions become the government's (and not just the citizens') business. As a consequence, the level of subvention will typically be extensive and the state will often take the initiative. The official aim will be to sustain not just a plurality of cultural options, but rather specifically the majority culture.

This approach is sort of post-post-national, because it emerges to address concerns left unattended by the prior two models. The approach aspires to be progressively nationalist. In other words, it seeks to place the national culture in a position of equality (rather than hegemony) vis-à-vis other cultures, it interprets the national culture inclusively instead of exclusively and it values the cultural autonomy of the individual.

Under this paradigm, the state must plunge even deeper into controversy than under liberal pluralism. The state must take a position on national cultural matters, not only with respect to societal subgroups, but also in regard to the society as a whole.⁶⁹ It must define and embrace a national culture for everybody.

68. See TAYLOR, *supra* note 20, at 126 ("A people who defined themselves by their language, and in the past also by religion, and who were subjected to strong pressures in North America left it up to their institutions not only to supply them with services but also to defend—and, at the same time, define—their identity."). Whether in this case, or in any other involving national groups within a larger society, the protection of national culture requires secession, is a question that I leave open. Allen Buchanan believes that "the need" of a group "to preserve its cultural identity . . . can, under certain highly constrained conditions, supply sound justifications for secession." BUCHANAN, *supra* note 66, at 136; *see also id.* at 161. With respect to Quebec, however, Buchanan argues that it can already afford its national culture sufficient protection under the existing arrangements:

Quebec already enjoys important group rights, including language rights, and a limited veto right over constitutional amendments. Further, like every other province, Quebec has the right to reenact within its own jurisdiction legislation that has been shown to be in violation of the Federal Charter of Rights and Freedoms. (This limited right of nullification is provided by the so-called "notwithstanding" clause of the current Canadian Constitution.) Each of these powers can be employed by Quebec to help preserve its cultural identity.

Id. at 61; *see also id.* at 161 (discussing methods of protecting Quebec's culture). Charles Taylor has also spoken against Quebec's secession. See TAYLOR, *supra* note 20, at 56-58, 102, 199 (same).

69. The Quebecois' case raises cultural policy questions both at the levels of society as a whole and societal subgroups. What is first and foremost at stake is whether a government—i.e., that of Quebec—may devote itself completely to furthering a substantive national culture. In other words, is progressive nationalism legitimate? The second issue is whether a state—viz., Canada—should allow particular national communities, such as the French-Canadians to take over a feder-

Within this model, the flexible and deferential approach described in the previous section is not an option. There are ineluctably going to be competing conceptions of the nation and the national culture. The state will have to pick one. It will have to completely discard all other proffered interpretations. The state will, moreover, end up using public monies to subsidize its own selection and to present its choice, both domestically and internationally, as that of the society as a whole. The state will inevitably run into strong opposition because it not only will be subsidizing a particular culture, but also committing its entire citizenry to that culture. Those who disagree with its general interpretation of what the nation is all about, or with its specific reading of what legitimately belongs to the national culture, will take exception vehemently. They will feel that their government is foisting a cultural agenda upon them in an oppressive way.⁷⁰

The statement that the state simply must get into the business of cultural anthropology and do its best, which already seemed unsatisfying in the previous section, now sounds outrageous. A commission of bureaucrats would appear even more unfit to dictate on its own the nation's cultural policy than to establish which national subgroups are legitimate and worthy of official subvention. Dissidents will justifiably object not only to the ultimate cultural decision, but also to the underlying procedure.

Therefore, the progressive nationalist must now assert an argument that the liberal pluralist should have invoked in the previous section. According to this argument, the state backs up its decision on these matters with more than impeccable reasoning. The state also relies on political legitimacy. In other words, the state takes its position to its constituents and obtains electoral support, making sure that its policy embodies the citizenry's will as expressed democratically.

The point is not to achieve popular enthusiasm in order to facilitate implementation. Nor is it to organize a beauty contest on an issue with respect to which there is no right or wrong answers. Instead, the goal is to consult citizens on a question that is difficult and controversial and with respect to which no one has a privileged access to the truth. In principle, everyone has the capacity and the right to participate constructively not only in the ultimate vote, but also in the crucial antecedent debate.

The democratic process constitutes, in this sense, an effective deliberation mechanism. Additionally and more significantly, it is an enterprise through which citizens reflect upon and express how they view themselves as a collectivity. This communal endeavor is fundamental because what is at stake is essentially a function of the people's self-perception. After all, a nation is a group of individuals who coherently imagine themselves as sharing a collective life. When defining the national community or the

ated political unit for their own cultural purposes. That is, should it not only subsidize national subgroups, but also grant them cultural self-government rights?

70. See KYMLICKA, *supra* note 3, at 107 ("On [the liberal] view, giving political recognition or support to particular cultural practices or associations is . . . unfair . . . because it subsidizes some people's choices at the expense of others.").

various aspects of that common existence, it is essential to give the members themselves a say.

Hence, progressive nationalism maintains that when there is a real menace to the national culture of the entire society, the state may intervene.⁷¹ It may choose to take measures only to remedy or to prevent serious damage. When the state decides to intervene, it must clearly establish the existence of a threat and act with extraordinary caution when interpreting what the nation is all about and of what the national culture consists. It must, moreover, formulate its policy on these complex and reflexive issues based on the democratically expressed civic will.

The upshot will be a contextual approach to the issue of official neutrality. Whether political and legal institutions should act culturally in a partial manner will depend on the underlying circumstances. In countries such as the United States, in which the contention that the majority culture is in peril is manifestly unpersuasive, the state should simply remain neutral or post-national. It should stay within the bounds of the previously discussed liberal pluralism. Otherwise, the danger arises that the government might contribute to the domination of the majority culture and to the disappearance of all other perspectives. If a particular political community, such as East Timor, however, is able to point to the existence of an objective threat to its national culture, state structures may act in a culturally partial manner. Culturally discordant groups, or their members, will have no legitimate claim against the government.

The model under consideration may, of course, recognize the difficulty of assessing a particular political community's claim that there is a real menace to the national culture. Presumably, the collectivity will have to bear the burden of proving that it has indeed fulfilled this condition. As a consequence, not many states will be in a position to adopt, legitimately, the previously described cultural policy.

The acknowledgement that often only some elements of a national culture are at risk need not present major conceptual problems either. Progressive nationalists could easily accept the notion that the state may protect only those aspects of the national culture to which there is a genuine threat. They might accordingly conclude that, though the Swedish government may not subsidize its automobile industry as part of an endangered culture, it does have this prerogative when it comes to protecting Swedish films against Hollywood productions. The state, aspiring to stand up for a particular aspect of the entire society's national culture, would have to show that, in the area in question, an authentic menace exists.

In sum, the progressively nationalist state must establish not only that the national culture is generally at risk, it must additionally prove that

71. See *id.* at 83 ("The survival of a culture is not guaranteed, and, where it is threatened with debasement or decay, we must act to protect it."); see also Dworkin, *supra* note 16, at 230 (discussing need to protect language from debasement or decay).

there is a specific danger in the area in which it is operating. In other words, it must demonstrate that it is protecting only those aspects of the national culture that are vulnerable.

Nevertheless, the final goal is not to isolate the national culture from outside influences. Such artificial isolation would actually prevent the culture from growing and ultimately destroy it.⁷² As Mario Vargas Llosa affirms, "cultures need to live in freedom, continually confronted with other cultures, in order to renew and enrich themselves and in order to evolve and adapt to the continuous flux of life."⁷³

Progressive nationalism is merely about permitting the national culture to coexist with other cultures in conditions of equality. It goes out of its way to protect as many minority cultures as possible. It restricts only those cultures that are overwhelmingly present in the society. Yet, its objective is not to eliminate them, only to curtail their hegemony. The expected outcome is a reality in which multiple cultures can freely and equally interact and cross-fertilize. Furthermore, and as already noted, the interpretation of the national culture is not exclusive, but rather inclusive. This means not only that membership and participation are open, in principle, to any individual or group; it also implies that the conception of the national culture allows for constant change as well as a smooth incorporation of foreign cultural influences.

72. See Ardití, *supra* note 25, at 99, 116 ("Essentialism and the 'hardening of the frontiers' among the various dialects hinders permeability as well as mutual contamination and facilitate separatism by creating worlds closed upon themselves.").

73. Mario Vargas Llosa, *Las culturas y la globalización*, EL PAÍS DIGITAL, Apr. 16, 2000 [hereinafter Vargas Llosa, *Las culturas*]; see also HABERMAS, *supra* note 14, at 222-23 (discussing how majority cultures take parts of minority cultures and make them their own); KYMLICKA, *supra* note 3, at 102-05 (noting that cultures evolve as result of choices of members); Waldron, *supra* note 48, at 783-85 (discussing composition of culture's members as making up what is seen as culture). Vargas Llosa is categorically against all state intervention on behalf of the national culture.

The most admirable lesson that cultures teach us is that they do not need to be protected by bureaucrats or commissioners. Nor do they have to be put behind bars, or isolated by the customs authorities, in order to stay alive and preserve their vitality. On the contrary, they thus wilt and become folkloristic.

Vargas Llosa, *Las culturas*, *supra*; see also Mario Vargas Llosa, *Cuando París era una fiesta*, EL PAÍS DIGITAL, Mar. 19, 2002 (arguing that "the only way in which cultural protectionism translates into an effective policy is through a rigorous system of discrimination and censorship against cultural products, which would be intolerable for an adult, modern, and free public"). Vargas Llosa does not see that the state's effort may be not reactionary and isolationist, but rather creative and enabling in the sense referenced in the next section. See KYMLICKA, *supra* note 3, at 105-06 (noting benefits of state intervention). Interestingly enough, Vargas Llosa has recently endorsed "policies that support and promote the Spanish language, which is a great legacy of all Spanish speakers, so as to enable it to acquire not just cultural, but also political and economic importance." M.J.D. Tuesta & J.R. Mantilla, *Las academias de la lengua española celebran con Fox medio siglo de historia*, EL PAÍS DIGITAL, Oct. 16, 2001 (quoting Vargas Llosa).

V. INTERNAL AND EXTERNAL IMPEDIMENTS TO NATIONAL
CULTURAL DEVELOPMENT

Many political philosophers and protagonists reject such a role for the state apparatus. Their basic point is that if individuals are not willing to develop and protect their national culture on their own initiative, and if this culture would perish without state subventions, then so be it.⁷⁴ From this viewpoint, national cultures have no right to a guaranteed survival and, at any rate, may not be preserved like "endangered species."

On this issue, Jürgen Habermas takes a clear position. Habermas states, "[t]he ecological perspective on species conservation cannot be transferred to cultures. Cultural heritages and the forms of life articulated within them normally reproduce themselves by convincing those whose personality structures they shape, that is, by motivating them to appropriate and continue the traditions productively."⁷⁵ The statement is correct, at least in the following sense: if the concerned individuals are not interested in their national culture, the culture will inevitably perish regardless of what the state does. The government's actions on behalf of that culture will be to no avail and undemocratic.

The situation could be completely different. Individuals might be, on the one hand, deeply committed to their national culture, but on the other hand, incapable of protecting it.⁷⁶ They may need and request official assistance. Under these circumstances, they will readily support and cooperate with the government. The consequence will be not only the democratization of the official intervention, but also a considerable improvement of the prospects of success.

Citizens may not be in a position to protect their national culture on their own due to a coordination problem, like the so-called Prisoners' Dilemma. This dilemma finds expression in the following narrative. Two prisoners who stand accused of committing a crime together face separate interrogation and, therefore, do not know what their counterpart will de-

74. See KYMLICKA, *supra* note 3, at 107 ("Every way of life is free to attract adherents," according to many liberals, "and if some ways of life are unable to maintain or gain the voluntary adherence of people that may be unfortunate, but it is not unfair.").

75. HABERMAS, *supra* note 14, at 222; compare KYMLICKA, *supra* note 3, at 107 ("On [the liberal] view, giving political recognition or support to particular cultural practices or associations is unnecessary . . . because a valuable way of life will have no difficulty attracting adherents."), and *id.* at 107-108 (explaining why some view support as unnecessary), with WALZER, *supra* note 14, at 27 ("As internal controls weaken, minorities can hold their members only if their doctrines are persuasive, their culture attractive, their organizations serviceable, and their sense of membership liberal and latitudinarian."), and *id.* at 31, 33 (discussing difficulties minority cultures face).

76. See MILLER, *supra* note 6, at 88 ("The role of the state should not be to impose some preformed definition of national culture on people who may resist it, but to provide an environment in which the culture can develop spontaneously rather than being eroded by economically self-interested action on the part of particular individuals.").

clare. If both confess, each will have to spend 10 years in prison. If one of them remains silent while the other one acknowledges their culpability, the first will receive a 15 year sentence and the second will, in compensation for his testimony, face no punishment. If both hold their peace, they will have to sit in prison for 5 years, based on the available circumstantial evidence.

For the two defendants it is rational, at the individual level, to admit their participation in the crime. Yet, what is reasonable at the collective level is not to confess.⁷⁷ The prisoners will remain in this bind even if they both realize that the result with the fewest years for both in total requires that the two of them refuse to cooperate with the authorities. They will probably not be able to improve their lot even if they secretly agree to keep quiet. For they will have no way of enforcing their covert pact, and the temptation to double-cross the partner will be almost irresistible.

$P_1 \backslash P_2$	Confess	Not confess
Confess	(10, 10)	(0, 15)
Not Confess	(15, 0)	(5, 5)

Figure 1. Prisoners' Dilemma Matrix (P_1 , P_2)

Members of a national minority could very well find themselves in a similar situation. It may be reasonable for them to take actions on behalf of their national culture collectively, but not individually. For example, the Quebecois might overwhelmingly support the idea of having their children educated in French in order to guarantee that the language will not become obsolete in the province. Yet, an individual family may feel that its best option is to send its children to English schools, regardless of what the rest of the community does. Its thought process might unfold as follows. If very few opt for French school, the language will wane in the region and children schooled in French will have a harder time than others surviving socially and economically. Even if most people do their part, children educated in English will still have the upper hand. On the one hand, they will have enough proficiency in French from home and school to profit somewhat from Quebecois social and economic opportunities. On the other hand, they will possess ideal English language skills to tap into what the Anglo-Canadian world—let alone that of the United States—has to offer.⁷⁸

77. Figure 1 illustrates their predicament. The prisoners, P_1 and P_2 , land on the collectively worse outcome whereby justice demands a sentence of ten years for both individuals.

78. "Prior to Law 101, [the Charter of French Language] it was in the best interests of the children of Quebecois and the children of new immigrants to be schooled in English since this was viewed as the language of opportunity." Rosemary A. McCarney, *Language Politics: Doing Business in Quebec*, 17 INT'L LAW. 553, 561 (1983). This measure is in stark contrast to the Charter's goal of making the

This scenario quite clearly gives rise to "free rider" issues. The following parable helps clarify my point. A group of persons wants to take a bus ride. If a majority of them buys a ticket, there will be enough money to cover expenses and ensure that the trip takes place. Not only does each person know that he or she may "free ride" if enough of the others pay, but each person also regards such an outcome as optimal. The next best result for an individual would be one in which he or she purchases a fare and enough people do the same for the bus to depart. That individual's third preference would be for a situation in which he or she, as well as a considerable number of other group members, cheats and, therefore, there is no ride. The worst possibility would be for that individual to pay while most others do not, so that the trip does not go forward. That individual faces the choice matrix sketched in Figure 2. Whether there is a ride or not, the best strategy is to cheat. Insofar as a considerable number of potential passengers face similar option parameters, there will be no ride.

	Ride	No Ride
Buy Ticket	1	-1
Cheat	2	0

Figure 2. Free Rider's Matrix

In the Quebec example, the inclination of each family is to free ride on everybody else's efforts on behalf of the community's language. Regardless of whether French survives in North America or not, each family senses it will be better off if it sends its children to English school. Its worst nightmare would be a situation in which it makes the relevant sacrifices and the language nonetheless virtually disappears because not enough people do their part.

Under these general circumstances, the progressively nationalist state steps in for purposes of coordination. That is, it becomes involved in order to make sure that people are able to bring about what is collectively rational. It is clearly not trying to protect the culture as an endangered species. It is acting against neither the will nor the indifference of its subjects. In fact, it is the instrument through which the citizens achieve their collective goals. The official efforts probably will not be in vain. Inasmuch as the government is doing nothing, but enabling people to do what they want to do anyway, they will, in all likelihood, gladly play along. The state is not imposing a policy that nobody likes, but rather implementing one that most favor and cannot carry out on their own. The underlying premise is that the government's actions enjoy wide democratic legitimacy.

French language an economically viable tool for Canadians living in Quebec. See *id.* (highlighting connection between language preservation and cultural stability).

As part of this coordination effort, the state plays what Amartya Sen denominates an assurance role.⁷⁹ It provides the guarantees and sanctions necessary for the community to attain the optimal outcome. It carries out, more specifically, a reassurance and a coercion function. On the one hand, it reassures those who want to cooperate but are reasonably distrustful of other people's good faith. On the other hand, it coerces those who are not particularly moved by the notion of fair play.

In addition to performing these tasks in order to solve a prisoners' dilemma or deal with a free rider situation, the state might play a collective self-discipline role and enable citizens to overcome a condition of "akrasia," or weakness of will. The paradigm is the case of Odysseus, who ordered his sailors to tie him up and disobey him when he later asked them to set him free and let him go to the beautifully singing sirens. Similarly, members of a national group may decide something in a particular, calm moment, but impulsively tend to do the opposite afterward. They may call on the government to help them stick to their original choice.

For example, they may deliberately determine that they want to listen to national folkloric music. Yet, upon arriving at the store, they may irresistibly gravitate towards popular imported sounds. As a consequence, they may support subvention of the national product so as to pressure themselves, in a gentle way, into consistency. Resolving to devote some of their common assets to this subsidy is, in principle, no different than making a down payment in advance, before they descend on the shopping center, in order to constrain their subsequent consumerist whims. In this scenario, state action will presumably risk neither futility nor illegitimacy.

Generally, the progressively nationalist state may rely on subsidies, taxes or regulation to perform the aforementioned coordination, reassurance, coercion and self-discipline roles. Through such means, the state becomes a vehicle of collective rational action. Thus, when it relies on subventions, the state makes a decision on behalf of its citizens to devote resources belonging to all to the national culture. It essentially sets up a public fund, compelling contributions of those who might cheat or impulsively back out later on and reassuring those who are mistrustful of their fellow citizens.

79. Accordingly, Sen speaks of an "assurance problem." See Amartya K. Sen, *Isolation, Assurance and the Social Rate of Discount*, 81 Q.J. ECON. 112, 113-15 (1967) (describing community or government pressures becoming marginalized by assurances that individuals will perform their respective duties). In subsequent papers, he develops the concept of an "assurance game." See AMARTYA K. SEN, CHOICE, WELFARE AND MEASUREMENT 74, 78-80 (1982) (illustrating hypothetical game in which problems of community compelling individual inaction become curtailed by individual awareness of potential failure of community-driven duty); AMARTYA K. SEN, ON ECONOMIC INEQUALITY 98 (1973) (stressing principle of "reciprocity" as potential solution for work motivation); Amartya K. Sen, *Goals, Commitment, and Identity*, 1 J.L. ECON. & ORG. 341, 350-51 (1985) (describing "assurance game" in context of individuals' choice and consequent, cooperative outcome of decision-making process).

It is possible to view taxes in a similar light. One could assert that they simply increase the relative price of, say, imported music and create a situation that pre-commits the community to investing in the national folklore. Once again, this kind of taxation policy basically amounts to a collective pledge to the national culture that pressures those prone to free riding or weakness of will into compliance, and reassures those who would understandably be mistrustful of an honor system.

State officials may rely on regulation to overcome these impediments to the society's commitment to the national culture. Accordingly, in the earlier example, the Quebec government simply orders all its non-Anglo citizens to send their children to French schools.⁸⁰ It thus expresses a commitment to the national language, coordinates the collective effort, reassures those concerned about non-compliance by others, keeps those prone to free-riding in line and bolsters the weak of will.

Of course, Quebec could use taxes or subsidies—or both—to pressure their constituents into choosing an education in French. Such an approach would be somewhat less coercive. Though forced to contribute to the financing of the French schooling system, non-Anglo families would be free to opt for the English schools. Nonetheless, the government may well conclude that a policy of taxation and subvention would not bring enough people to French educational institutions or would place the entire burden of supporting the French language on the poor. This very last point is simply that increasing the price of English schooling through taxes or decreasing the price of a French education may have much less of an effect on the affluent than on those who are less well-off.

Citizens may turn to their government to remove not just internal, but also external, obstacles to their culture's development. For instance, the Swedish public might believe that its national film industry confronts unfair competition from Hollywood and needs official protection. The argument might be that imported mass productions enjoy economies of scale and benefit from the producers' domination of the distribution outlets. Without government intervention—so the reasoning would go—Swedish movies will be more expensive and harder to find.

The state might expand the local industry's operation scale, within Sweden, by requiring that films in state sponsored events be Swedish or, internationally, by negotiating free trade arrangements with other countries. It might adopt measures, such as the invalidation of contracts awarding preferential treatment to foreign competition, in order to end the distributive inequities. In both cases, government officials would be attacking the exogenous obstacles—diseconomies of scale or unequal distribution opportunities—straight on.

80. "The Charter [of the French Language] sought through compelling French language education for children and by then offering business opportunities that could be pursued in French, to make the use of French economically advantageous." McCarney, *supra* note 78, at 561.

Certainly, the state might achieve its objectives indirectly through taxes or subsidies. In any case, eliminating exogenous impediments to cultural growth demands governmental action. Of course, citizens often may achieve a similar result by making private donations. In the previous example, an extremely nationally committed Swedish public could simply pay a higher price for local movies or contribute to a solidarity fund to support the domestic movie industry. The first question would then be whether the previously evoked endogenous obstacles, which call for state engagement, reappear. If so, governmental action again may be necessary and legitimate.

A further factor is relevant to the choice between a private and a public approach to removing external hindrances to cultural evolution. Through regulations, subsidies or taxes, the government may attain the same objective at a lower cost than would a group of private citizens. First, the described regulatory action might require a change in the role of existing state officials, but no additional outlays. Second, subsidization through the state apparatus already in place may be more cost-effective than private gifts when, for instance, channeling funds from the donors to the beneficiaries requires setting up an expensive infrastructure. Third, foreign companies sometimes—such as when they are monopolists—do not have the full capacity to pass on a tax to the local consumer. Under these circumstances, the community ends up with a net return from its taxation effort, which it may use to offset the high price it is paying for domestic productions.

In its struggle to have foreign movies dubbed into Catalan rather than Spanish, the government in Catalonia has relied on subvention as well as regulation to combat what it perceives as an external threat to the national culture.⁸¹ I will now discuss this case in some detail to show the practical difficulties involved in this kind of effort. The example will also demonstrate how all different types of impediments to cultural development may act simultaneously in a particular context. Therefore, the example demonstrates how imprecise any categorization will be.

Since 1989, the Catalan government has been subsidizing Catalan dubbing up to one hundred percent, as long as there is a commitment to distribute at least eight copies thus adapted to the movie theaters.⁸² Nonetheless, few of the distributors of weight have taken advantage of these subventions.⁸³ In 1998, the Catalan Executive or “Generalitat” issued a decree requiring the film industry to make half of all major productions available in the regional language.⁸⁴

81. See Teresa Cendros, *La industria del cine fuerza a la Generalitat a renunciar a las cuotas de doblaje al catalan*, EL PAÍS DIGITAL, May 9, 2000, available at <http://www.elpais.es> (discussing Catalanian response to perceived external cultural threat).

82. See *id.* (discussing facts).

83. See *id.* (same).

84. See *id.* (same).

The government's operating assumption seems to be not only that distributors are insensitive to Catalanian linguistic sensibilities, but also that Catalan adaptations are not profitable. Because the Catalanian market is relatively small, dubbing films into Catalan might entail considerable diseconomies of scale. The Generalitat's subsidies basically eliminate any such disadvantage. In fact, now the Catalan version will be less expensive than its Spanish counterpart insofar as its costs fall on the government.

The argument that there is an exogenous obstacle to national cultural development might run as follows. The ordinarily higher cost for Catalan adaptations is due to unfair market conditions. Just because there are fewer Catalonians than Spanish speakers, the former would normally have to pay a steeper price to view movies in their own language. Therefore, the Generalitat may get involved in order to even the playing field. The rationale is that Catalonians should not have to face an economic penalty for choosing to live in their own culture and language. Naturally, a central underlying assumption is that the government has the democratic endorsement of the citizenry.

One remarkable aspect about this case is that the subsidies, which have been in place for over a decade, have been hopelessly ineffective. In part, it was this failure that subsequently lead the authorities to draw on their regulatory powers. The Generalitat thus launched its 1998 mandate upon realizing that it had been unable to attain its objectives by relying exclusively on subvention.

On first impression, however, it seems that the subsidies should have sufficed. Distributors should have jumped at the opportunity of dubbing their movies into Catalan without having to pay a single peseta. They should have done so, one would have thought, if they believed they could expand demand or, at least, maintain it at the current level. Their favor with consumers might increase not only due to the attractiveness of their new product, but also to the public relations points they might gain through their solidarity with the national culture. Even if the overall consumption level remained the same, their profits would theoretically go up as part of their production costs—i.e., dubbing expenses—went down.

Why did the subsidies miss the mark? There are many conceivable explanations. Most likely, all of them are at play to some extent. First, perhaps the larger distributors indeed do not fully appreciate the value of the national language. Second, they certainly have a product in high demand and, therefore, need not be too flexible with their customers. Third, the people who would have wanted to watch the giant film productions in Catalan are all capable of watching the Spanish version and most probably are willing to do so if there is no option. Fourth, there is a non-negligible sector of the population that does not understand Catalan and whose film consumption might decrease if fewer theaters show Spanish adaptations.

Needless to say, it may be that Catalan speakers themselves prefer the Spanish version. There are two ways of interpreting this possibility. On the one hand, these individuals simply may not value at all movies dubbed into the regional language. This reading is hardly persuasive inasmuch as these very people seem to support the Generalitat's efforts to make films available in Catalan. On the other hand, these persons may confront some of the earlier described coordination problems. Consequently, despite a revealed preference for Spanish adaptations, there may be strong (albeit impaired) popular support for Catalan adaptations and Catalanian culture. The citizenry may thus have an individual and impulsive propensity to consume the Spanish version of a film, but a collective and deliberate commitment to the Catalan adaptation. Under these circumstances, the provincial government would have powerful reasons to intervene and help overcome the internal obstacles. It ultimately would be stepping in to empower its constituents to do what they wanted to do anyway but were incapable of carrying out on their own.

The Catalanian government ultimately gave up on its initiative and withdrew the 1998 decree. It yielded not because it doubted the legitimacy of its effort, rather it capitulated to the pressure of the distributors of Hollywood mass-productions.⁸⁵ These firms, along with theater owners, filed suit and even threatened to take their product off the market altogether. The latter move probably would have made the authorities extremely unpopular. The former action was at least initially successful. The Superior Court of Justice issued a preliminary order precluding the imposition of sanctions under the 1998 law while the case was pending.⁸⁶ Thereafter, the Generalitat twice suspended the application of the decree before finally repealing it.⁸⁷

The Catalanian Government actually entered an "agreement" with the Federation of Movie Distributors.⁸⁸ The former consented to abrogating its order and keeping its subsidies, while the latter "only made a vague declaration of intent to start dubbing films into Catalan."⁸⁹ The Generalitat thus provided only a thin disguise for its capitulation. "The joint statement [was] of a generic nature [and contained no] concrete commitment on the industry's part to launch versions in the autochthonous language."⁹⁰ The Secretary General of the ruling Democratic Convergence Party, Pere Esteve, essentially conceded the government's defeat when he

85. The Secretary General of the ruling Democratic Convergence Party, Pere Esteve "defended the Autonomous Executive's earlier decision to approve the dubbing decree in response to the limited presence of Catalan in Catalanian movie houses. In his opinion, there should be an attempt to modify the current situation, which he referred to as 'incorrect.'" *Id.*

86. *See id.* (stating facts).

87. *See id.* (same).

88. *Id.*

89. *Id.*

90. *Id.*

stated: "Things have not turned out the way we would have wanted, nor have we achieved what we had proposed."⁹¹

One lesson that progressive nationalism may draw from this whole affair is that the government is not necessarily an all-powerful champion of the national culture. Even when state officials decide to act against detrimental exogenous forces and even when they have solid reasons on their side, they may not be able to have their way. They may run into a resolute and effective counterattack on behalf of the status quo. The opposition may rely not only on persuasive philosophical and legal arguments, but also on economic muscle. Under these circumstances, the government may have to abandon even a thoroughly thought-out and legitimate policy.

In sum, a commitment on the part of the progressively nationalist state to the survival and well-being of the national culture is not necessarily an authoritarian and hopeless effort against the people's will. It may simply be an implementation of the citizenry's decision to combat collectively either endogenous or exogenous threats to the national culture. To be sure, the question whether government involvement is the best approach and which specific measures are the most adequate remains open for each particular case. Official cultural programs will often turn out to be ineffectual or self-defeating in practice.

Progressive nationalism, therefore, rejects the idea that the mere existence of a menace to the national culture justifies state intervention. It maintains that there must be either an internal or an external threat of the kind referenced above. If government authorities are unable to show that this is the case, they may not legitimately act even on behalf of a seriously impaired national culture. It would then be up to private citizens to take any protective action.

VI. THE RIGHTS OF CULTURAL DISSIDENTS AND MINORITIES

A common contention is that any kind of official cultural partiality is illegitimate because it constitutes discrimination against members of other (usually marginal) national groups. These individuals—as well as those who disagree with the official interpretation of the national culture or with any state involvement in these matters—are not even remotely in the position of the prisoners in a dilemma, who ought to appreciate or at least understand that the assurance role played by the state is in their interest. Similarly, they do not in any way resemble bus passengers faced with a government that just wants to keep them or others from free-riding. Further, they are not at all in the position of the weak of will who need a little help or nudge from the state. Finally, they are absolutely not like a group whose collective effort to forestall a foreign threat takes the form of governmental action.

91. *Id.*

These persons are not part of and want no part in the proposed national culture. Yet, the state is embracing that culture and protecting it at their expense. They will in all likelihood take offense and feel cheated.

Freely exempting any objectors from complying with the regulations promulgated, paying the taxes levied or financing the subsidies granted is no adequate solution. Many of the protective measures will be of little use if individuals are in a position to escape easily the provided duties and penalties. The state will see its capacity to overcome the prisoners' dilemma, the free-rider challenge, or the weakness-of-will problem diminish immensely if it ends up having to rely mostly on voluntary compliance. Similarly, it will hardly be able to embody the collective will against an external danger if too many citizens refuse to endorse and finance its efforts.

The state could, of course, try to exempt only a relatively small and discrete group. Quebec has adopted this strategy in its effort to force children to attend French language schools. It has, accordingly, allowed only Anglo-Canadian students to stay in English schools.⁹² This kind of approach certainly helps keep the exception from swallowing up the rule. The downside, however, is that the government has to start yet another controversy by releasing some communities and not others, as well as by recognizing the membership in the exempt groups of some individuals and not that of others. State officials will have to make, as well as justify, these divisive determinations.

More importantly, dissenters will undoubtedly take the government to task for protecting a national culture, not just for making them contribute to the effort. They will remonstrate against the proclamation of a national culture on everybody's behalf. They will object to the symbolism and not merely to the particular measures involved. Therefore, they will protest even if the state does not make them bear any of the specific burdens

92. McCarney notes that:

Beginning with the education provisions, the Charter stipulates that instruction in kindergarten classes and in elementary and secondary schools shall be in French. Exceptions to this prescription may, however, be requested by parents of children who fall within the exceptions provided in the Charter: (1) Those whose father or mother received his or her elementary education in English in Quebec; (2) Those whose father or mother, domiciled in Quebec on August 26, 1977, received his or her elementary education in English outside Quebec; (3) Those who, in their last year of school in Quebec before August 26, 1977, were lawfully receiving their instruction in a public kindergarten class or elementary or secondary school; and (4) The younger brothers and sisters of the children described above. In addition, families from other parts of Canada and from abroad who are planning to live temporarily in Quebec can send their children to English language schools for a three-year period. If they continue to live in Quebec, this option can be extended for another three years.

McCarney, *supra* note 78, at 562.

saddled on the rest of the citizenry. They will then claim that the official cultural policy is in itself discriminatory and oppressive.

Charles Taylor purports to have an answer to this criticism.⁹³ He believes that the government may support a national culture so long as it respects the fundamental rights of the members of minority groups and dissidents.⁹⁴ According to Taylor, political and legal institutions may discriminate only when other rights are at stake.⁹⁵ The state may, presumably, control the language of commercial, but not of personal, communication. It may similarly require children to learn the national history, but not a particular religion.

It is most difficult to define a catalogue of basic rights. Unfortunately, Taylor offers no concrete guidance. Procedural liberals would regard as fundamental many of the rights that he views as secondary. In addition, many of the discriminations that he would allow, these liberals would probably outlaw based on a relatively formal principle of equality as a source of inalienable rights.

It is actually misleading to assume that there is a subset of rights embraced by both liberal pluralism and progressive nationalism. In fact, there is profound disagreement on the role of the government and the prerogatives of individuals. A progressively nationalist state has to offer an alternative and yet persuasive conception of personal freedoms and the reach of legitimate governmental action.

The way to start is precisely with the presumption against official favoritism on cultural matters that I have been delineating. The point of requiring the authorities to show that there is a concrete threat to the

93. See TAYLOR, *supra* note 2, at 25-73 (stressing individuals' notions of "authenticity" and how they relate to continuous struggle of individuals' choices in between the public and "intimate spheres of recognition").

94. See *id.* at 125 ("A society with strong collective goals can be liberal provided it is also capable of respecting diversity, especially when this concerns those who do not share its goals, and provided it can offer adequate safeguards for fundamental rights."); see also Valdés, *supra* note 42, at 22 (1992) ("In fact, the rights that bear a direct relationship to the satisfaction of basic goods constitute an 'off-limits zone' for negotiations and majority decisions.").

95. Taylor would "call for the invariant defense of certain rights, of course. There would be no question of cultural differences determining the application of habeas corpus, for example." TAYLOR, *supra* note 2, at 61. Generally, "the rights in question are conceived to be the fundamental and crucial ones that have been recognized as such from the very beginning of the liberal tradition: rights to life, liberty, due process, free speech, free practice of religion, and so on." *Id.* at 59; see also TAYLOR, *supra* note 20, at 176 (comparing national accountability and recognition of minority culture through respect of inalienable rights afforded to individuals under American constitutional law). Yet, his model would distinguish "these fundamental rights from the broad range of immunities and presumptions of uniform treatment that have sprung up in modern cultures of judicial review." Taylor, *supra* note 2, at 61. It would be "willing to weight the importance of certain forms of uniform treatment against the importance of cultural survival, and opt sometimes in favor of the latter." *Id.*; see also TAYLOR, *supra* note 20, at 176 (noting critical importance of cultural preservation through particularized treatment of individuals subject to uniformity of modern criminal courts).

national culture and that it is of the kind described in the previous section is indeed to protect cultural minorities and dissidents. The state demonstrates respect for these persons by refusing to embrace a culture that is alien to them unless there are compelling reasons to do so.

The further requirement that the progressively nationalist state narrowly tailor its protective measures to the specific needs of the national culture goes in the same direction. The state minimizes the extent to which it promotes the majority culture in the name and at the expense of everybody. It, thus, makes still another concession to those who do not identify with the national cultural agenda.

The state's obligations in this regard do not end at this point. Progressive nationalism imposes one final condition. The state must guarantee that those who dissent or differ culturally have enough space to pursue their own cultural options on their own. It must uphold not only these persons' rights to cultural self-determination, but also their human dignity in a Kantian sense.⁹⁶ It must, in other words, recognize their cultural autonomy, as well as stay clear of treating them merely as a means with respect to the end of protecting the national culture. To be sure, the state may impose burdens on them in its pursuit of that goal. Yet, it may not completely disregard their status as persons worthy of respect.

Therefore, official action that suffocates cultural minorities and dissidents is illegitimate; even when the state punctiliously limits the impact of its measures in the manner just pointed out. For example, the Bosnian government would enter proscribed terrain if it required all schoolgirls to wear a Muslim veil. It would not be able to vindicate itself, even in the unlikely event that it was able to demonstrate that the policy is strictly necessary to confront a genuine internal or external threat to the Bosnian culture, for it would be trampling upon the individual and religious liberties of conscientious objectors.

From this viewpoint, cultural minorities and dissidents should have not only substantive, but also procedural rights. They should, in other words, be specifically entitled to challenge the state's actions in an independent forum. The state would first bear the burden of showing that there is a menace to the national culture. Secondly, it would have to verify that the above referenced internal or external impediments to the na-

96. See generally IMMANUEL KANT, *FOUNDATIONS OF THE METAPHYSICS OF MORALS* 75-79 (Lewis White Beck trans., Harold Weisberg ed., 1969) (proposing connection between morality and freedom as "the property of the will of all rational beings."). Kant offers that independence from foreign influence crystallizes an individual's idea of freedom. See *id.* at 76 (juxtaposing freedom of individual capacity to reason with moral notions of human dignity). This notion of freedom enables a human being's perspective and sensitivity to the world, thereby encouraging what Kant describes as "belonging" to the world of sense. See *id.* at 79 (distinguishing characteristics of world of sense versus world of understanding). Human dignity relies upon the individual's conscious participation in the world of understanding, no matter how minimal that participation may be. See *id.* at 79-80 (developing connection between belonging to "intellectual world," however slight).

tional culture's flourishing are in place. Moreover, it would have the obligation of demonstrating that it has narrowly tailored its measures to the objective of removing the identified obstacles. Finally, it would have to corroborate that minorities and dissidents are still able to live their preferred cultural life on their own and without state interference. In general, an official bias in favor of the national culture without meeting these four conditions would constitute a violation of the basic rights of the members of national subgroups.

Preliminarily, the state would have the duty to assess very carefully on its own whether it has satisfied the four criteria before taking any step on behalf of the national culture. Subsequently it would have to be ready to present its reasoning and persuade a separate institution, such as a court of justice. Individuals who believed that the state had violated their rights would thus be able to bring their cases to a fair and autonomous arbiter.

Such an appeal system is crucial not just because these matters are complex and error is a real possibility. A more important reason is that the state may not always be capable of a completely impartial assessment. It may at times err too much in favor of the majority community on whose political support its survival hinges. It may, similarly, not be in a position to appreciate objectively the burdens visited upon minority cultures or on dissenters, once it has intensely committed itself to the majority culture.

Therefore, dissidents would have the right not only to petition their government, but also to go to court. They would be able to assert in litigation that there is no true threat to the national culture, that a collective defense through the state is unnecessary, that the official measures are excessive, or that they have virtually no space left to exercise their own cultural freedom. The relevant tribunal or administrative agency would make an objective determination and enforce it. The progressively nationalist paradigm thus grants cultural minorities and dissidents not only a specific right to cultural autonomy, but also a general due process right to challenge the legitimacy of the government's policy.

How would this kind of controversy play out in a concrete case? I will take the example of a law establishing that government employees must conduct all official business in the national language.⁹⁷ In my hypotheti-

97. See *Arizonans for Official English v. Arizona*, 520 U.S. 43, 48 (1997) (describing state constitutional amendment that instituted this kind of policy and describing cause of action). In *Arizonans*, a state employee claimed that her First Amendment rights to free speech became violated when Article XXVIII of the Arizona Constitution became law, which established English as the official language of the state. See *id.* at 44 (stating facts of case). Because the employee resigned before she brought her constitutional claim to court, the Supreme Court held that the employee did not have standing to warrant a decision by the court. See *id.* (discussing legal parameters to which petitioners must conform in order to have justiciable claims in United States Supreme Court). Thus, the court did not directly address whether the Arizona law passed United States constitutional muster. See *id.* at 69-72 (precluding decision as to constitutionality when mootness of petitioner's appearance in Court was at issue).

cal, individuals belonging to a linguistic minority challenge the order in court. I will go over their arguments in a very general way. A full discussion would require much more detail and many more pages.

State officials would first have to demonstrate that the national language is at peril. In the United States, for instance, such a showing would be impossible. English is in ascension throughout the world—with ever more people using the language. Within the United States borders, virtually one hundred percent of the population speaks English.

Though there is an increasing number of United States immigrants who are primarily fluent in Spanish and other languages, an overwhelming majority of whom are either already fully proficient in English or well on their way. Typically by the second generation—and invariably by the third—the newcomers communicate better in English than in their ancestors' tongue. If the English language in the United States survived the massive immigrant influx of the end of the nineteenth century and the beginning of the twentieth century, it will certainly fare well vis-à-vis the current wave, in which linguistic assimilation takes place more frequently and more quickly.⁹⁸

Finally, the expansion—both within and without these ethnic communities—in the number of individuals who master a second language, is a boon rather than a threat to the national language. "For the study and knowledge of other languages," as Spanish philosopher Miguel de Unamuno points out, "advances the study and the improvement of our own."⁹⁹ Consequently, the United States population will probably improve its mastery of English as it becomes fluent in other languages.

Because it does not meet the first requirement (i.e., that there be a threat to the national culture), the state need not bother arguing about the other ones. As long as it does not meet any one of the conditions, it may not justify the policy on cultural grounds. The regulation, as it stands, is illegitimate and constitutes a violation of the rights of cultural dissidents and minorities.

Naturally, the state might then shift to the contention that there are administrative efficiency reasons behind the measure. Accordingly, it might assert that there would be chaos if its employees used any language other than English, or that there would be profound acrimony among the workforce if it allowed anybody to employ a language that not everybody understood. Neither of these arguments is particularly compelling. The

98. See R. de la Garza & A. Trujillo, *Latinos and the Official English Debate in the United States*, in LANGUAGE AND THE STATE: THE LAW AND THE POLITICS OF IDENTITY 209, 215 (D. Schneiderman ed., 1991); KYMLICKA, *supra* note 3, at 16 (providing evidence to show that Hispanic immigrants who plan to permanently live within United States embrace English language despite rapid "assimilation" to English groups).

99. M. de Unamuno y Jugo, *Comunidad de la lengua hispánica*, in LA RAZA VASCA Y EL VASCUENCE; EN TORNO A LA LENGUA ESPAÑOLA 165, 172 (1974) (suggesting communal benefits to native tongue when citizenry learns a second language).

first one exaggerates the disruption that would result from the occasional deployment of a foreign language. The second one neglects the fact that this kind of regulation does not diffuse, but rather intensifies ethnic tension.

Even if the bureaucratic rationale were minimally persuasive, it would hardly suffice to overcome discrimination allegations that members of linguistic minorities and others could raise. These individuals could argue that the state has violated their free speech and equal protection rights. They could additionally contend that the state has an obligation not only to accommodate, but also to support minority ethnic groups. A complaint along these lines would be extremely powerful indeed.

In a different context, however, the whole analysis would change considerably. The provincial government of Galicia in Spain, for example, would be in a much better position to defend a policy of this sort than a state entity in the United States. It could maintain more plausibly that the national language, in addition to suffering historical discrimination, is still at peril vis-à-vis the dominant Spanish culture. It could readily show that in the past there were outright restrictions and in the present there are structural impediments, similar to those affecting the French language in Quebec. In other words, the region is an enclave within a larger area in which Spanish predominates; the Spanish language carries much more weight internationally than Galician; and a significant portion of the local population is not Galician.

Galician authorities would then have to demonstrate that the menace to the autochthonous culture is of the kind that would justify collective action through the state. Once again, the arguments would be similar to those adduced in the case of Quebec. There are considerable individual advantages to using Spanish that could undermine the collective commitment to the Galician tongue. In the world, in Spain and even in the Galician region, mastering Spanish is generally more in an individual's interest, both socially and economically, than acquiring advanced skills in the regional language.

By the same token, weakness of will might lead the majority to stick to Spanish instead of holding on to the regional language. Even if committed to Galician, many people might at the moment of truth lethargically gravitate towards the Spanish language, in which most of their schooling has taken place and which predominates in the mass media. They may, therefore, call on their state to keep them from slacking off.

Finally, there may be real exogenous obstacles, which only the provincial government can effectively remove, to using Galician in governmental offices. Employees may be willing to deploy the regional language in conducting their daily business, but it may be easier for them to use Spanish for external reasons. For instance, they may be in a position to produce bureaucratic forms and procedures more cheaply and less onerously in Spanish than in Galician. The explanation may be that there normally are

equivalents already at use elsewhere in the country, in Spanish and readily adaptable. Switching to Galician would require a translation, which may be expensive and burdensome. The government could, in addition to requiring the employment of Galician, provide economic means to cover any extra costs.

It would be practically impossible for a United States state agency persuasively to invoke similar arguments. Even if there were a threat to the English language in the United States, it would hardly be of the kind requiring collective action through the state. There are barely individual advantages to using other languages that might undermine the collective commitment to English. In the United States, mastering the English language is generally in an individual's interest, both socially and economically.

By the same token, weakness of will might lead the majority to stick to English and not to learn a new language. To be sure, the linguistic minority might conceivably suffer *akrasia*. Yet, this condition would not justify any coercion by the majority. The weakness of will rationale for official cultural intervention applies only in the case in which a group democratically decides to constrain itself through the institutions of the state. Finally, there is no real external threat calling for a collective political response.

If the government of Latvia decided to adopt a policy of this kind, it would probably be better able to justify its actions than that of the United States, but less so than that of Galicia. It would, in all likelihood, have no problem demonstrating that the national language is in danger. The Latvian government clearly would be capable of showing linguistic and cultural discrimination during Soviet times. Furthermore, it could argue that it must act in order to redress these inequities as well as to uphold a national culture to which barely over 50 percent of the population belongs. As Alan Buchanan points out, "approximately 48 percent of the population of Latvia is non-Latvian."¹⁰⁰ Buchanan explains further that "the vast majority of this 48 percent are Russians, most of whom are, or are children or grandchildren of, persons who were moved into Latvia as colonists to secure Soviet control over the area after it was forcibly annexed in 1940."¹⁰¹

The Latvian government would have a more difficult time meeting the second requirement, that there be a coordination problem. Latvia—like its Baltic neighbors—has moved away from the Russian to the Western European zone of economic influence. In addition, ethnic Latvians presently seem to be instinctively averse to Russian culture. They would, therefore, appear not to have the previously mentioned endogenous impediments to supporting their own national culture.

100. BUCHANAN, *supra* note 66, at 142.

101. *Id.*

Latvian authorities might fare better, nonetheless, if they claimed that there are exogenous obstacles. They could maintain that the Soviet Union created a situation in which only a bare majority speaks Latvian. They could assert, further, that Latvian, which obviously was never a world language to begin with, will not be in a position to recuperate fully its status or to develop healthily unless it has a solid place in public spaces and is the sole official language.¹⁰² Of course, it is an open question whether these arguments will carry the day.

Even if it were ultimately able to meet this second condition as well as the first condition, the Latvian government would not be off the hook, nor would its Galician counterpart. The last two requirements are equally crucial and almost certainly would be decisive in the dispute. I will consider each one of them separately.

A fair decision-maker would probably find the policy overdrawn—and therefore at odds with the third criterion—if it did not grant minority personnel a reasonable adjustment period to become sufficiently fluent in the language. The reasoning could be that the state could achieve the same linguistic goals without being arbitrary with its employees. Similarly, the measure would run into difficulties if it required that the use of the national language in government offices be accent free. It would be over-inclusive because it would apply to cases in which there is no real menace to the national language, or at least not of the kind that would justify state intervention.

Even if the measure were not excessive, government employees might contend that the measure culturally asphyxiates them personally and, consequently, runs counter to the fourth principle. They ought to prevail if the regulation required them, for instance, to speak the national language among themselves, during informal situations such as their lunch breaks. For no matter how much this kind of restriction advanced the objective of protecting the national language, it would bring the government too close to acting as cultural purity police.

When considering the fourth criterion, the judiciary would have to determine whether the state has significantly impaired the capacity of individuals to make autonomous cultural choices. In a sense, the question would be whether the government has gone too far into the citizen's private sphere. Yet, this individualistic phrasing of the issue is misleading, for there is ineluctably a public or communal dimension to (national) cultural life.

In general, the state must do more than just allow individuals to devote themselves in isolation or secrecy to an alternative national culture. They must instead have the right to become collectively involved in this

102. See KYMLICKA, *supra* note 3, at 111 ("[O]ne of the most important determinants of whether a culture survives is whether its language is the language of government—i.e., the language of public schooling, courts, legislatures, welfare agencies, health services, etc.").

kind of activity. For instance, the government must permit citizens to associate generally with each other in order to speak any language they wish. They should be able to set up instruction centers for themselves and their children, create dissemination points for their language in the communications universe—newspapers, television and Internet—and use their native tongue in their cultural and political endeavors. By the same token, they should be entitled to fraternize with their linguistic peers on a casual basis.

If the measure under consideration did not allow employees to speak the language of their choice in an informal setting, it would appear to infringe precisely upon this last prerogative. It would, in essence, preclude minority government employees from linguistically affiliating with each other while at work. At all times, they would either have to remain silent or artificially communicate in a foreign language, with the state watching over their shoulder and keeping linguistic transgressions in check. In this scenario, the state would be violating this group's cultural autonomy, as well as treating the members as means with respect to the end of promoting the national culture. Of course, the cultural priorities of minorities and dissidents are not entitled to absolute deference. Yet, they seem to have carried no weight at all in the hypothetical at hand.

I would like to raise a final point before closing the discussion. This fourth criterion—like the other three—draws no crystal clear lines. It is not a magic formula from which one mechanically cranks out specific answers; it only underscores the relevant considerations. It provides parameters for the analysis. The decision makers will inevitably have to make a painful judgment call. The principles provided do not relieve them from engaging in critical thinking, but rather invite them to reflect carefully upon the questions before them. They signal not the end, but instead the beginning of the deliberation.

There normally will be no clear-cut answer to the question of whether the state has met any one of the listed conditions. Nor will it always be evident which of these conditions is at stake. For instance, do government agencies infringe upon the third or the fourth criterion if they do not provide a translation for ordinary citizens who do not speak the national language? The third condition applies to situations in which the state's measures go far beyond what the goal of defending the national culture requires. In contrast, the trigger for the fourth condition is a scenario in which the government's actions advance this end, but at too high a cost to ethnic minorities.

Minority individuals who are not on the government's payroll may contend that the official refusal to translate for them does not serve the underlying purpose, inasmuch as they probably will not learn the national language anyway. They will—so their argument would go—bring in their own interpreter, try their best to communicate at whatever level they can with their present linguistic skills or simply do without the state services.

Alternatively, they could concede that a substantial number of them will yield and that the government would come closer to its goal. Their contention could then be that the state is furthering its purpose too much at their expense. They could claim that there has been a flagrant violation of their right to collective self-determination and human dignity.

Therefore, the deliberation in court—just like that within the state, in civil society or in academic circles—will not only be generally open-ended, it will defy any rigid compartmentalization. It will constantly challenge (and at times overwhelm) the categories. Sometimes examining the same issue from two different criteria will yield the same result. On other occasions, the outcome will vary and a second look at the case—or at the whole conceptual framework—will be necessary. The aim of the test I have formulated is not to straitjacket the discussion, but simply to guide it and to organize it, to the extent possible.

There is no way of avoiding an intense and contentious debate on these matters. The most one may hope for is a serious and transparent argument that comes to an end with either some kind of consensus or, in the worst case scenario, a truly honest disagreement. Under such circumstances, cultural minorities and dissidents will feel that the polity is treating them with due consideration, even if their claims do not ultimately carry the day.

VII. CONCLUSION

State support of a national culture is dangerous business. The danger is not simply that in extreme cases political and legal institutions may degenerate into instruments of nationalistic terror. Even a rather moderate official bias in favor of the national culture can be unfair and oppressive vis-à-vis cultural dissidents and minorities. This kind of injustice can lead to profound disillusionment and even widespread resistance, particularly in societies pervaded by pluralism in ideological perspectives and ethnic backgrounds.

The inevitability of reasonable divergence on matters of national culture and substantive ethics accounts, to a significant extent, for the temptation of liberalism. The liberal model I have described purports to prevent polarization and a breakdown of the social contract. Presumably, citizens with very different backgrounds and beliefs will be able to regard a liberally constituted government as not only disinterested, but also legitimate. Accordingly, the underlying political principles rest not on any of the various competing and controversial conceptions of the good, but rather on a notion of right capable of attaining a broad (overlapping) consensus. These norms thus define a political culture that makes social union or integration possible.

I started with liberalism precisely because it offers a straightforward and appealing answer to the question of what the governmental policy should be on matters of nationality. This order of presentation not only

enabled me to begin with an option that is clearly worthy of consideration, but it also brought me to the issue of nationalism on a very cautious note. Therefore, I arrived at the issue fully aware of the need to impose limits on the state. In the model I entertained at the end, the state must thoroughly justify every step it takes towards a national culture policy.

Hence, I have consciously refused to proceed by defining a nationalistic outlook and confronting potential objections. Instead, I showed how, under certain circumstances, a liberal pluralist model raises issues that call for an official defense of the national culture. Legal and political institutions must, under these conditions, endorse a particular (national) substantive conception of the good. It will not be sufficient to remain neutral with respect to the various competing national perspectives or affirm the value of having a multiplicity of such standpoints. The state must view the national culture as, in itself, valuable and irreplaceable.

This article has discussed the prerequisites for this kind of policy. First, the national culture must be at risk. More precisely, the threat must be specific to those aspects of the national culture that the state seeks to protect. Second, there must be one of the mentioned internal or external obstacles to cultural development. Third, the government must narrowly tailor its measures to the existing danger. Finally, it must respect the sphere of cultural autonomy of individuals and groups.

I argue that these four requirements give a procedural dimension to the rights of cultural dissidents and minorities. In other words, people who disagree with or feel oppressed by the official cultural policy are entitled to demand that the state meet all of these conditions. In particular, an independent tribunal should have the authority to arbitrate the dispute.

The sketched reflections are, at best, only the beginning of wisdom. As already conceded, the postulated parameters do not delineate a magic formula that will do away with controversy altogether. They only underscore relevant considerations. They simply provide some guidance for societies called on to engage in this complex exercise of deliberation and self-examination.

