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**Right to take part in cultural life (article 15 (1) (a) of the Covenant)**

Friday, 9 May 2008

Collective Dimensions of the Right to take Part in Cultural Life \*

Background paper submitted by Mr. Ephraim Nimni\*\*

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\* Reproduced as submitted.

\*\* The views expressed in the present document are those of the author and do not necessarily reflect those of the United Nations. Mr. Ephraim Nimni is reader on nationalism and ethnic conflict resolution at Queen's University Belfast.

## **Collective Dimensions of the Right to take Part in Cultural Life<sup>1</sup>**

### **Committee on Economic, Social and Cultural Rights Presentation for the Day of General Discussion on: “The right to take part in cultural Life” Geneva, 9<sup>th</sup> May 2008**

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Comments and suggestions welcomed

To have a meaningful discussion on the collective dimension of cultural life, it is necessary to start with a working definition, for there is a widespread belief that the term “cultural life”, is vague, has different and mutually exclusive meanings and lacks the minimum precision to become the cornerstone to a treaty or of legislation. The Oxford English dictionary attributes to the world culture a bewildering variety of sometimes contradictory meanings, from cultivating the land, to worship, intellectual achievement, refinement, the arts generally and other forms of human achievement. No wonder then that then right to cultural life is considered by its detractors to be vague and imprecise. Yet there is one dimension of culture that has unmistakable collective dimensions and it used as a linchpin in recent discussions on the politics of recognition and multiculturalism. This dimension has, for reasons I shall discuss below, important implications for the way we understand our globalised world. This is the understanding of culture as: *the distinctive set of ideas, social behaviour, way of life and patterns of communication of a particular society or people*. I therefore propose to use this definition as a tentative working definition for the purposes of this paper. This must no be construed as a denial of the importance of other dimensions of the term culture. We will be indeed poor members of the *intelligentsia* if we deny the importance of the arts, literature, philosophy, education and all aspects of the written word, particularly in a period where influential mass media outlets show

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<sup>1</sup> The ideas presented here are further developed in my forthcoming monograph, Multicultural Nationalism, London, Routledge, 2009

disturbing signs of indifference or worse *philistinism* towards artistic, literary, and intellectual achievements. While this is an important topic that must be addressed, I cannot engage it in this short paper for I will run the risk of conflating different interpretations of culture and fall into the imprecision identified by Thomas Eriksen in his critique of UNESCO<sup>2</sup>. For the purposes of this presentation, it will be sufficient to say that the term “culture” is a heteronym and that the pursuit of one meaning is not to be construed as resting or denying importance to other meanings.

The understanding of culture advocated in this paper bears a family resemblance<sup>3</sup> to ethnicity and nationality, but it is not identical to it for it also encompasses aspects of what is commonly understood as religion. Nevertheless, and for reasons that will be explained below, in considerations connected to the collective right to culture, the rights of ethnic groups and nationalities as minorities in existing nation-states must be considered in tandem. When culture is defined as above, the collective dimensions to the right to take part in cultural life are crucial for the accommodation of national and ethnic minorities in multinational or multiethnic settings and for this reason, it merits a sustained discussion.

Advocacy of collective dimensions to the right to culture attracts two generic kinds of criticisms. The first is that any claim for collective cultural rights is redundant because its provisions are already encapsulated in the general principles of Human Rights and that these are necessary and sufficient. The second criticism is that the advocacy of collective cultural rights is pernicious it tends to freeze or ossify cultural practices in time and space, and worse, privilege cultural practices are not compatible with general principles of Human Rights. Following this, advocates of collective cultural rights are labelled “relativists”. I shall analyse in turn, both kinds arguments.

## ARE COLLECTIVE CULTURAL RIGHTS REDUNDANT?

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<sup>2</sup> T. H. Eriksen, “Between Universalism and Relativism : A Critique of the UNESCO Concept of Culture”, pp. 127-148, in J. K. Cowan, M.-B. Dembour and R. A. Wilson (eds.), *Culture and Rights. Anthropological Perspectives*. 2001, Cambridge, Cambridge University Press.

<sup>3</sup>In the sense of Ludwig Wittgenstein’s *Familienähnlichkeit*, see Ludwig Wittgenstein (1953/2001). Philosophical Investigations. Blackwell Publishing.

We need to start with a platitude that is often forgotten. The prevalent form political organisation across the world is the nation-state, yet a nation is not a state. The latter is a governmental and administrative apparatus and the former a cultural community, -- self defined or otherwise -- akin but not identical to an ethnic group. Nation-states are modern symbiotic creatures, governmental entities that claim to supply a sovereign territory to a nation<sup>4</sup>. While there are 192 states represented in the UN, these contain circa 2500 nations, thirteen times more nations than states represented in the UN. Less than 10% of all states represented in the UN are nation-states in the literal sense of the term (most of them are small enclaves or islands), encompassing a single cultural community in the territory over which they exercise sovereignty<sup>5</sup>. Political and cultural boundaries did not historically coincide, and they coincide even less today. If nation-states adopt one official culture (the national culture), minority cultures are caught in difficult dilemmas. If there are no international provisions for the collective recognition of minority cultures, minorities will try to seek remedies elsewhere or face unpalatable choices: they either secede, assimilate to the dominant culture or accept to live in a subordinated position. These dilemmas are faced by many cultural minorities in liberal or illiberal states and in democratic or authoritarian political systems.

Elsewhere I have challenged as imprecise and unhelpful the prevailing definition of national self-determination as meaning only the creation of a separate nation-state<sup>6</sup>. Secession is a particularly problematic quest for cultural self determination. It has not only thrown geopolitics into turmoil<sup>7</sup>, but has destabilised the international system, for it has initiated bloody and destructive political quests for a model that is by and large, unfeasible and unattainable, particularly in

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<sup>4</sup> Here the much used distinction between “civic” and “ethnic” nations is unhelpful. At best, this dichotomy is not a sharp distinction but a sliding continuum. No nation is entirely “ethnic” or “civic” and most if not all, are caught in between these two conceptual poles. The same applies to the dichotomy “ethnic culture” vs. “civic culture”. For an elaboration of this see: Taras Kuzio, ‘The Myth of the Civic State: A Critical Survey of Hans Kohn's Framework for Understanding Nationalism’, Ethnic and Racial Studies, vol.25, no.1 (January 2002), pp.20-39.

<sup>5</sup> Stephen Ryan, “Nationalism and Ethnic Conflict”, in Brian White, Richard Little and Michael Smith, Issues in World Politics, MacMillan, London, 1997. pp.162-6, See also Anthony Smith, National Identity, Penguin Books, 1980 pp. 14-24

<sup>6</sup> See E. Nimni, "Nationalist multiculturalism in late imperial Austria as a critique of contemporary liberalism: The case of Bauer and Renner" Journal of Political Ideologies, Volume 4, Issue 3 October 1999 , pages 289 – 314. on this regards, see also Y. Tamir, Liberal Nationalism, Princeton University Press, 1993, Ch. 3, “The Right to National Self-Determination”, pp.57-77

<sup>7</sup> Anthony D. Smith, “State-Making and Nation-Building”, in John A. Hall (ed.) The State, Critical Concepts, London, Routledge, 1993 p.60

circumstances where the territorial space of two or more cultural communities overlaps. Often the resort to secession signals the astonishing lack of international tools for the accommodation of peoples of different cultures under the umbrella of a single state. In other words, there is no commonly accepted international model that will guarantee collective cultural and political rights of minorities within unified states. Consequently, demands for the implementation of the collective right to cultural self-determination are designed to correct an injustice that is a by-product of a world of nation-states. Here some titular nations<sup>8</sup> are afforded cultural protection by the state while a majority of others are not. At the moment, the only accepted way for nations to secure their collective right to cultural life is to build a separate nation state. If we wish to avoid impossible and often bloody demands for state secession, we urgently need an agreement on a tighter and more precise definition of the collective rights of peoples to take part in cultural-national life and this must be achieved in tandem with a cultural right to self-determination<sup>9</sup>. At this point a sceptic could ask the following question: Why go to all this trouble? Why not implement a principled system of Human Rights to remedy this situation?

## CULTURAL COLLECTIVE RIGHTS

The collective dimensions of the right of minority cultures to be recognised in the public domain can be violated without necessarily infringing basic individual rights. Individual members of cultural minorities could be allowed freedom of speech, movement, assembly, the right to follow their religion, etc while at the same time, repressing their demands to have their cultural distinctiveness recognized in the public domain. The right of an individual to petition authorities

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<sup>8</sup> Titular nation (Russian: титульная нация) was a term developed by Marxism-Leninism to denote the few Soviet nations that because of their characteristics were entitled to autonomous republics. I use the term here to denote nations that have a nation-state.

<sup>9</sup> A cultural right to self-determination is understood as a form of self-governance national and ethnic minorities that does entail the creation of separate states. Precedents are to be found in the *millet system* in the Ottoman Empire, The consociational model of Arend Lijphart (see A. Lijphart, Democracy in plural societies: A comparative exploration. New Haven: Yale University Press, 1977 as subsequent editions, and above all, in the model for *National-Cultural Autonomy* developed by the turn of the century social democratic thinkers Otto Bauer and Karl Renner. See Otto Bauer, The Question of Nationalities and Social Democracy, edited by Ephraim J. Nimni, English translation of *Die Nationalitätenfrage und die Sozialdemokratie* with a foreword by the president of Austria Dr. Heinz Fischer (Minneapolis and London: University of Minnesota Press, 2000) and E. Nimni (ed.) National-Cultural Autonomy and its Contemporary Critics, Routledge, London, 2005.

is not infringed when she is asked to petition only in the official language of the state. The right of an individual to teach her culture to his offspring is not violated when he is told that this is her private business. The individual right to religious freedom is not violated when she is told that he faces no constraints if she does so in her private domain. Indeed strict secularism in the public domain does not constrain the individual right to worship in private. Forbidding the use of religious symbols in secular institutions causes a great deal of pain and anguish to the communities concerned, but does not impinge on their individual religious freedom.

Consider in contrast the position of an individual member of the dominant majority. She can petition authorities in his vernacular. The heritage of her nation is taught in public schools, his secularism is sectioned by public institutions. Both individuals enjoy individual rights, yet only the latter can fully identify with his state. The cases of indigenous peoples and the Roma, as well as other nomadic groups in liberal democracies, including the prohibition of wearing Islamic headscarves in secular institutions emphasize the problem. Equality? Yes, but on what terms? Here equality only operates within the parameters of the dominant culture. But why are minority demands for cultural recognition different from other demands for equality? Is it not sufficient to demand Affirmative Action? Unfortunately, affirmative action principles are not of much help here. In the case of women and other disadvantaged groups, Affirmative Action principles and policies are designed to ultimately erase differences based on sex, gender and ethnicity. In sharp contrast, demands for cultural recognition are designed not to erase, but on the contrary, to maintain and legitimise difference in the public domain. These demands crash with versions of liberalism that are, according to Charles Taylor<sup>10</sup>, inhospitable to difference. Consider the following autobiographical observation by the noted political theorist Professor Bhikhu Parekh:

A couple of years ago when I was travelling by train from Hull to London, I was sitting opposite an elderly Pakistani couple and next to their daughter. When the crowded train pulled out at Kings Cross, the parents began to talk in Urdu. The girl, who was silting next to me, began to feel restless and nervous and started making strange signals to them. As they carried on their conversation for a few more minutes, she angrily leaned over the table and asked them to shut up. When the confused mother asked her for an explanation, the girl shot back. Just as you do not expose your private parts in public, do not speak that language in public! <sup>11</sup>

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<sup>10</sup> Charles Taylor, Multiculturalism, Examining the Politics of Recognition, Princeton University Press, 1994, p. 60.

<sup>11</sup> Bhikhu Parekh, "British Citizenship and Cultural Difference", in Geoff Andrews (ed.) Citizenship, Lawrence & Wishart, London, 1991, p. 193

Consider the alienation, sense of shame, cultural inadequacy and lack of integration felt by these minority citizens of a well-known liberal democracy, a feeling that many who were subjected to a similar experience can easily identify with. Furthermore, take the case of indigenous peoples living in settler liberal democracies. Indigenous groups invoke centuries of displacement, settler invasion, cultural destruction and often genocide to justify their demands for national and cultural autonomy with differential rights. Indigenous demands for self-determination rarely request territorial sovereignty and always cultural recognition, even if they draw their legitimacy from strong affinities with homelands. In states that are often violent intrusions into their ancestral homelands – an intrusion that made them scattered minorities -- indigenous peoples demand cultural autonomy and public recognition of their culture. Here again, contemporary liberal settler societies do not infringe the individual, but the collective rights of indigenous cultures if they do not respond to these demands. Consequently, the recognition of the collective right to take part in public life is not only a vital human need, but a *sine qua non* step for the integration of national and ethnic minorities in multicultural states.

However, a sharp divide between collective and individual rights is often difficult to sustain. Most democratic rights are not restricted to one individual but can only be enjoyed collectively by a plurality of individuals. Van Aaken defines rights as *legally recognised interests which are to be found in a continuum from individual to collective interests*<sup>12</sup>. But granting collective or supplementary cultural rights to minority communities can cause difficulties because national and ethnic groups are seldom institutionalised and this compounds their disadvantage. For this reason, the recognition of minority cultures in the public requires some form of weak institutionalisation, or at least, some form of legal dispensation, what Ayelet Shachar calls “multicultural jurisdictions”<sup>13</sup>. This will be discussed below.

#### ARE CULTURES AGAINST HUMAN RIGHTS?

The second line of criticism is that collective rights to culture freeze and ossify cultures and sanction cultural practices that are violations of human rights.

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<sup>12</sup>Anne Van Aaken, (2005), “Making International Human Rights Protection More Effective: A Rational-Choice Approach to the Effectiveness of Ius Standi Provisions”, *Preprints of the Max Planck Institute for Research on Collective Goods*, Bonn /16 p. 9

<sup>13</sup> Ayelet Shachar, *Multicultural Jurisdictions, Cultural Differences and Women’s Rights*, Cambridge University Press, 2001.

It is important to understand that nations, and ethnic groups and cultural communities are ideologically plural even if they share common cultural mores. Internally, they are open to competing interpretations of the national, ethnic or religious self, and these competitions are sometimes acrimonious. It is easily recognised that titular nations, particularly those who exercise titularity of liberal democratic states (“civic” nations), are ideologically plural and face internal contests to define the national self. It is also generally accepted that citizens of liberal nation states have competing definitions of “the national interest” and which of them prevails is the result of a competition between contending political groups. However, the same recognition is not easily extended to minority cultural communities which are often seen as incapable of internal debate, “backward”, “pre-modern” static and homogeneous. Minority religious and cultural communities are much less commonly understood as temporary outcomes of internal struggles, and this tends to stigmatise and obfuscate the identity of these communities. Pre-modern religious practices of minorities are often wrongly seen as constitutive, which are then counterpoised to the modernity of the beliefs of the dominant group. This conveniently forgets that dominant groups also have a (recent) history of cultural and religious practices that violate Human rights, and that these are subjected to vibrant debates and criticism by members of those communities.

To put the argument bluntly, there is hardly any culture in the sense discussed here that has not, at a given moment violated Human Rights. Consider The Magdalen laundries in Ireland. These were asylums converted into laundries that serviced both the clergy and commercial clients. Here unmarried mothers, having been separated from their offspring, were sent to the laundries and interned for life, usually with the collusion of families anxious to avoid the shame of having a “loose” daughter or sister. The institutions had long history in Ireland. The first was established in Dublin in 1766. It was only in October 1996 that they were closed<sup>14</sup>. Similar institutions existed in other parts of Europe.

It will be a travesty of fairness and decency to say that contemporary Irish culture and contemporary Catholicism are responsible for this crime, even if their historical responsibility is

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<sup>14</sup> Fintan O'Toole, “The Sisters of no Mercy”, The Observer Sunday February 16, 2003 <http://film.guardian.co.uk/features/featurepages/0,,896476,00.html> See also, James M. Smith, Ireland's Magdalen Laundries and the Nation's Architecture of Containment, University of Notre Dame Press, Indiana, 2007



clear. Many contemporary Irish or Catholics criticize these practices and this is genuinely accepted and they are not seen as lesser members of their communities because of that.

The same principle is NOT applied to Islam and to many ill-informed and prejudiced commentaries that argue that Islam and human rights are incompatible. Sharia law evokes in Europe images of mutilations, subordination of women, etc. Yet many are driven by prejudices and few try to understand Islamic culture. In this way, contemporary European Islamophobia has an historical antecedent in European anti-Semitism.

Islam is a multifaceted religious culture, with many exegesis, debates and differences of opinion on how to understand religious thought and its accompanying jurisprudence. Sharia (شريعة) is the terrestrial interpretation of the revelation and as such not infallible and subject to different contingent interpretations of time and circumstances. Consequently, there are many different ways of Sharia, some of them are contrary to Human Rights and others are not. Contrary to a widespread misunderstanding in Europe, There is no strictly static codified set of laws of Sharia. In fact there are interpretations of Sharia that are indigenous to the West and attuned to European circumstances. Some European and north American Islamic scholars are attempting to develop a type of Fiqh (فقه), Scholarly Islamic Jurisprudence, attuned to the separation of Islam from the state and fully compatible with the Universal principles of Human rights. *Fiqh Al-Aqalliyat* (Fiqh of Minorities) attempts to provide guidance for Islamic communities that are minorities in non-Islamic states. All of this is controversial and there lively debates between Islamic Scholars on these matters<sup>15</sup>.

The examples above show that cultures are dynamic, subjected to many influences and internal debates and internal contestations, they change over time and that it is myopic as misinformed to say that cultures are essentially pro or anti-human Rights. They are in fact neither of the two and a fertile arena for contestation. In both, majority and minority communities, the less externally threatened communities feel, the more they will be inclined to air internal debates in public and to

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<sup>15</sup> I am grateful to my former student dear friend Samir Mahmoud for his useful suggestions on Islamic law. There is a lively literature on Western and European Islam and its compatibility with Human rights, see among many Tariq Ramadan, Western Muslims and the future of Islam, Oxford University Press, 2004, On Islam's compatibility with Human Rights see Abdullahi Ahmed An-Naim, Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law, Syracuse University Press, 1990. On women in Islam, see the writings of Prof. Norani Othman, founder of the Sisters in Islam Organization <http://sistersinislam.org.my/index.htm>, and author of Muslim women and the challenge of Islamic extremism [Petaling Jaya, Selangor, Malaysia], Sisters in Islam, 2005.

accept compromise ideas, and vice versa, the more threatened they feel, the less inclined they will be to engage in debates and will normally close ranks to find protection. Consequently, the recognition of minority cultures in the public domain is not only a critical normative need, but a proven way encourage internal minority debate, compromising attitudes, and more robust group integration into the larger polity. For this to be achieved, some degree of institutionalisation of minority's collective right to culture is needed.

The idea of collective rights or group rights acquired a bad name because of the abusive use of it made by the apartheid regime in South Africa, Israel and other discriminatory states<sup>16</sup>. It will be however, a major mistake to associate the idea of collective rights with discriminatory regimes. Collective rights for national communities are not only compatible with democratic practices but require internal democracy and procedural arrangements including the individual right to exit. The presence of supplementary bodies to manage these demands provides a strong incentive for resolving internal problems for they will otherwise be referred to wider state institutions. Equally, reformers have a better chance to defeat fundamentalists for they can clearly show the rewards for cooperation and compromise with majority communities<sup>17</sup>.

In modern nation-states, the state is the guarantor of the collective rights of the dominant or official nation. Consider for example the efforts of nation-states to protect their languages, to ensure that holidays and festivities of the nation are recognised as public holidays, and even to represent the symbols and collective memories of the official culture in the legal system and symbols of the state. In many liberal-democratic nation-states, those who wish to become citizens are very often required to learn and appreciate the dominant language, to know the history of the nation and to understand the meaning of its symbols. Even in the most "civic" of settler nation-states, would be citizens are invited to share, in or at the very least to understand, the symbols and cultural assets of the dominant nation<sup>18</sup>. It is not difficult to conclude that

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<sup>16</sup> John Coakley, "Approaches to the Resolution of Ethnic Conflict: The Strategy of Non-territorial autonomy", *International Political Science Review*.1994; 15 pp. 297-8

<sup>17</sup> Ayelet Shachar, Multicultural Jurisdictions, Cultural differences and Women's Rights, Cambridge University Press, 2001, p. 124

<sup>18</sup> As mentioned, the distinction between "civic" and "ethnic" nationalisms is a matter of degree and not of substance. Most nationalisms are neither entirely civic nor entirely ethnic, but occupy a space in the sliding continuum between these two terms. I have explained this in detail in "Constitutional or Agonist Patriotism? the

nation-state is a very efficient protector of the cultural rights of the dominant or titular nation. The issue is however, that the nation-state does not protect and promote the values and symbols of the non-dominant ethnic or national minorities without ceasing to be the state of the nation. Liberal-democratic nation-states cannot support with the same devotion the collective rights of minority cultures without contradicting their goals. The best minorities can expect is some marginal recognition. With all its emphasis on coexistence, liberal nationalism's response to multiculturalist demands does little more than carve out a precarious area of diversity on the margins of a predominantly assimilationist structure.<sup>19</sup>

In contrast, must suggest a model for the implementation of the collective rights for all ethnic and national communities whose members are citizens of the multicultural state. If the multicultural state is to be a community of communities, then it must protect the legal and administrative personality of each participating community. This is not only counter-intuitive in a world of nation states, but it also challenges well established notions of the indivisibility of sovereignty. But this was not always the case.

Since its creation, the modern state in both, its absolutist and liberal democratic forms, eroded the system of collective rights that existed in pre-modern states. In a number of pre-modern empires, such as the Roman and the Ottoman Empires, cultural communities were understood to be bearers of rights, even if the society was not democratic. In contrast, from its beginnings, the Absolutist State and its heir, the liberal democratic state dismantled long established communities – professional and cultural – to reunite emancipated individuals on the basis of a centralised system of authority<sup>20</sup>. Otto Bauer argues that the liberal democratic state is organised according to the "centralist-atomist" principle. The centralising principle was initially developed by the absolutist state, and the progressive centralisation of the state which followed had the effect of reducing society to its smallest parts, in Bauer's words, atoms, i.e., to single individuals. This idea was inherited by liberalism and taken by it to its logical conclusion by sweeping away the last remnants of ancient autonomous associations of individuals. The

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Dilemmas of Liberal Nation-states", in Per Mouritsen & Knud Erik Jørgensen (eds.) Constituting Communities, Political Solutions to Cultural Conflict, Palgrave Macmillan, Basingstoke, 2008 pp. 94-116

<sup>19</sup> B. Parekh, "British Citizenship and Cultural Difference", in Geoff Andrews (ed.) Citizenship, Lawrence and Wishart, London. 1991, p. 194

<sup>20</sup> B. Parekh, "Political Theory and the multicultural society", Radical Philosophy, Vol. 95, May-June 1999, p. 28.

consequence of this is that state and society in contemporary states are all embracing centralised totalities. In liberal democracies, there only are two recognised politico-juridical entities. One is the individual and the other is the sovereign will of the undivided collective. This is what Bauer and Renner call the centralist-atomist structure of modern nation-states. This totalising tendency fails to acknowledge meaningful intermediate locations that result from individuals adhering to different cultural and religious values to the ones supported by the official culture of the state.<sup>21</sup> This matter came to a head recently in the United Kingdom in the acrimonious criticism that followed the Archbishop of Canterbury's recent lecture on Islam in English Law.<sup>22</sup> The key argument of the Archbishop is that human beings have multiple allegiances and that these can be complementary. This is not given due recognition in the legal system of most liberal democracies, which demands instead a single, individual, standardised, form of commitment.

The atomist approach explains the organising principle of the liberal democratic nation-state. The inhabitants of the state are nationally identified with the state through habitation and citizenship, and irrespectively of ethnic or religious affiliations. States are thus seen as nation-states whether they are ethnically homogeneous or not<sup>23</sup>. In the liberal nation-state the cultural practice of the dominant nation (the official culture of the state) is disguised by a single and all encompassing procedural practice that claims to be fair and culturally neutral, but that is derived from the historical experience of the dominant national community. Furthermore, a liberal view of culture is by definition grounded in liberal theory and cannot avoid seeing every culture from its individualistic liberal angle<sup>24</sup>. This creates some distortions for minority communities that do not subscribe to secular-liberal values and procedures or have different cultural mores from those of the dominant community. These minorities often wish and can justify from their own cultural perspective a common form of governance for the state they live in, and, can signal tolerance and the adherence to Human Rights principles. For those communities to be integrated, some kind of

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<sup>21</sup> Otto Bauer, The Question of Nationalities and Social Democracy, with an introduction by E. Nimni, University of Minnesota Press, Minneapolis, 2000, pp. 223-224

<sup>22</sup> Islam in English Law. Civil and Religious Law in England - lecture by the Archbishop of Canterbury, Dr Rowan Williams. From Lambeth Palace, 7 February 2008  
[http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/07\\_02\\_08\\_islam.pdf](http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/07_02_08_islam.pdf)

<sup>23</sup> U. Ra'anani, 'Nation and State, Order out of Chaos' in U. Ra'anani et al. (eds.), State and Nation in Multiethnic Societies (Manchester: Manchester University Press, 1991), p. 20.

<sup>24</sup> B. Parekh, 'Dilemmas of a Multicultural Theory of Citizenship', Constellations, vol. 4, no. 1 (1997), p. 60.

state recognition of their way of life and their customary law and in personal matters is necessary. This is what the Archbishop of Canterbury calls, following the Israeli feminist writer Ayelet Shachar<sup>25</sup>, “supplementary jurisdictions” and these must be congruent with the common ethos of the state.

Without collective rights, cultural minorities are confined to play a subordinated role in both, the international and domestic systems as they will lack the instruments and privileges of those involved in collective action. If the nation-state is an institution endowed with a cultural collective persona, then national and ethnic communities equally require some kind of collective cultural rights and privileges. Consider for example a trade union. In these post-Fordist days, it is difficult to decide who is a worker and who is not, as the characteristics of the working environment shift continuously. If trade unions were only seen as a conglomerate of individuals willing to partake in a common activity, they will then lack immunities and attributes that are granted to corporate bodies. Imagine that an employer would be able to sue for damages every individual member of a union that goes on strike. Very soon the trade union will cease to function. A similar situation applies to national and ethnic communities. Without some kind of institutionalisation and a collective persona, these communities will be at a disadvantage when dealing with the formal organisations of the state. Without a collective persona, national and ethnic communities will be unable to organise the resources to educate their young and to protect their way of life.

#### THE NATIONAL CULTURAL AUTOMY MODEL (NCA)

I have discussed extensively in previous works how a revamped National Cultural Autonomy Model could help foster the collective recognition of minority cultures<sup>26</sup>. Here the argument will only be schematically presented.

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<sup>25</sup> Ayelet Shachar, Multicultural Jurisdictions, Cultural differences and Women’s Rights, Cambridge University Press, 2001, p. 125

<sup>26</sup> See, “National Cultural Autonomy as an Alternative to Minority Nationalism”, in Ethnopolitics, Vol. 3 No.3, pp. 345-365, September 2007 also published in David Smith and Karl Cordell (eds.) Cultural Autonomy in Contemporary Europe, Routledge, London, 2008 pp. 9-28, “Constitutional or Agonist Patriotism? the Dilemmas of Liberal Nation-states”, in Per Mouritsen & Knud Erik Jørgensen (eds.) Constituting Communities, Political Solutions to Cultural Conflict, Palgrave Macmillan, Basingstoke, 2008 pp. 94-116, 2008, National-Cultural Autonomy and its Contemporary Critics, Routledge, London 2005, "Introduction to the English Reading Audience," in Otto Bauer, The Question of Nationalities and Social Democracy (Nationalitätenfrage und die Sozialdemokratie) (Minneapolis: University of Minnesota Press, 2000), pp. xv-xlvi, "Nationalist Multiculturalism in Late Imperial Austria as a Critique of Contemporary Liberalism: The Case of Bauer and Renner," Journal of Political Ideologies, vol. 4 (1999), pp. 289-314

The model of National-Cultural Autonomy (NCA) proposed by the former president of Austria Dr Karl Renner is based on the premise that ethnic and national communities can be organised as autonomous units in multinational states without considering residential location when the abode of feuding national communities overlaps. The singularity of this model can be understood when contrasted to most other models of cultural autonomy. In most conventional theories, cultural autonomy requires a territorial base for the autonomous national community, or at least the intention to build some kind of "autonomous homeland" that will serve as the territorial base. In contrast, Bauer and Renner's theory rests on the idea of "non-territorial national autonomy." This means that autonomous communities are organised as self governing collectives whatever their residential location within a multi-nation state. As in the millet system in the Ottoman Empire, peoples of different ethnic identities can co-exist in the same territory without straining the principle of national autonomy. The crucial difference with the millet system is, however, that the autonomous communities are organised democratically and based on individual consent to belong and internal democracy<sup>27</sup>. The NCA model acknowledges that cultural communities require recognition of their specificity and difference in the public domain and this is achieved through the existence of legally guaranteed autonomous corporations. Unlike more conventional forms of autonomy and self-determination, it rejects the idea of an ethnic or national exclusive control over regions or territorial states.

In its Rennerian version, the NCA model resembles somewhat the present arrangements in the Brussels-Capital Region (*Région de Bruxelles-Capitale, Brussels Hoofdstedelijk Gewest*)<sup>28</sup>. It requires that all citizens declare their nationality when they reach voting age. Members of each national community, whatever their territory of residence, would form a single public body or association endowed with legal personality and collective rights. This model is based on the premise that the most controversial issues in the relationship between ethnic and national groups are issues concerning language, education and the recognition of cultural rights in the public

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<sup>27</sup> For a discussion on how these principles can be applied to the Balkans see: D. Anagnostou, "Breaking the Cycle of Nationalism: The EU, Regional Policy and the Minority of Western Thrace, Greece", South European Society and Politics, 2001, 6:1, pp. 99 - 124

<sup>28</sup> See Philippe van Parijs, "Must Europe be Belgian? On Democratic Citizenship in Multilingual Polities", in Catriona McKinnon Iain Hampsher-Monk (eds.) The Demands of Citizenship, London and New York: Continuum, 2000, p. 242

domain. Networks of communication across cultural boundaries are crucial because the model recognises both, communities and individuals as legitimate interlocutors.

While stimulating and thought provoking, the NCA model was developed for the circumstances of Austria at the beginning of the twentieth century. Our circumstances are different and they require some revision of what it proposes. First, not all national minorities are interested in the wide range of autonomous rights advocated by Renner. In most liberal democracies a “thinner” version of the model will be sufficient to meet demands. Second, in the twenty first century national belonging and allegiance is less clearly defined, as we are blessed with far more ethnically hybrid and transnational cases. A model for the recognition of collective dimensions of the right to take part in cultural life could begin from the premises of the NCA model, but will need revise them considerably by incorporating the more recent insight from models of multiculturalism and ethnic conflict resolution.

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## CONCLUSION

While the Heteronomy of the term culture is fully recognised, in this paper it is only understood as the distinctive set of ideas, social behaviour, and way of life and patterns of communication of a particular society or people. Understood in this way, the collective right to take part in cultural life in the public domain is a crucial ingredient in the accommodation of minority cultures for the following reasons:

- 1) Cultures are dynamic and polysemic; they change over time and are arenas for ideological competitions. The ideology of Human Rights must become a key competitor and we must facilitate its success. No culture is for or against HR. They must be won over.
- 2) In a world of nation states minority cultures are at a disadvantage. Titular nations have states to protect their integrity. Stateless cultures do not. To compensate for this disadvantage and avoid the curse of continuous secession, cultural minorities should enjoy internationally agreed forms of collective rights in the public domain.
- 3) Cultures tend to close ranks when under external threat, and open to internal debate when they feel secure. Make no mistake. Cultural fundamentalism can only be defeated internally. The

international community must always create the conditions for internal democratic debates to thrive, for this gives the best opportunities to Human Rights to succeed.

4) Cultural security creates the best possible conditions for intercultural cooperation. Cultural insecurity creates a closing of ranks and the worst possible conditions for intercultural cooperation. The collective recognition of minority cultural rights in the public domain creates the best conditions for cultural security.

5) A charter or treaty that recognises the collective persona of stateless minority cultures and gives them international security is a condition *sine qua non* for international stability.

Let's make it be.