

***A Right to Culture?***  
***Liberalism and Nationalism***

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**Introduction**

Since John Rawls' *Theory of Justice* came on the scene liberalism has been largely identified with the view that domestic justice requires the state to be neutral with respect to its citizens' competing conceptions of the good life. The dominance of Rawlsian thinking has contributed to the claim that nation-states with *cultural* or *ethnic* conceptions of political membership are inherently illiberal. Most commentators point to Israel as a prime offender. English Analytic philosopher Michael Dummett speaks from this tradition when he says "We can say with assurance that, in the world as it now is, and as it will doubtless be for many centuries yet, no state ought to take race, religion or language as essential to its identity...Should countries like Israel and Pakistan, founded as a refuge for people of a certain race or creed from actual or potential persecution, be exceptions to the principle that no modern state should define its identity by race, religion or language? No: the reasons against doing so apply as much to them as to other countries." (*On Immigration and Refugees*, 2001, p. 21)

The position known as "liberal nationalism" is an attempt to modify the standard liberal assumption that justice requires bracketing culture and placing it outside the scope of official, public political life. A number of scholars have contributed to this literature, but for today I will focus on two writers: Chaim Gans and Yael Tamir. Gans and Tamir argue that liberalism and nationalism are compatible. Liberalism is understood as the political philosophy which takes the freedom of the individual as its principle value, and which assigns to the individual such particular liberties as life, motion, happiness, conscience, assembly and press. "Liberal" is used in an inclusive sense to capture the tradition of Western Europe, especially England, Scotland,

France, Germany and the United States and running from the 17<sup>th</sup> and 18<sup>th</sup> centuries, to our day. Liberalism is exemplified by diverse figures such as Locke, Hobbes, Mill, Kant, and of course John Rawls. As *liberals* both Gans and Tamir wish to avoid a politics which would relegate any group to “second class citizenship” merely because of its status as a minority ethnic, religious or linguistic group. Thus the philosophy of liberalism is seen as requiring a guarantee of equal standing for citizens. Gans and Tamir contrast liberal nationalism with the more familiar and historically potent *illiberal* nationalism. Illiberal nationalism is easily recognized by its policies of forced migration, ethnic cleansing, and domestic discrimination, usually performed in the name of the “nation state.” Some forms of nationalism, then, are unattractive to both strict neutralists liberals like Rawls and to liberal nationalists like Tamir and Gans.

As Gans and Tamir’s work illustrates, the question of liberal nationalism is of particular importance to the future of Zionism. Dummett singles out Israel as a non-liberal state, guilty of relegating its non-Jewish citizens to second class status. (6) However, at a general level, at stake is the shape of liberal democratic societies more broadly. Can such states be simultaneously liberal and multi-ethnic, multi-cultural, and multi-national? If so, what institutions are necessary for the preservation of cultures? **Liberal nationalism distinguishes itself from other views by noting that Dummett’s worry about second class citizenship must be *counter-balanced* with the protection of a civil right which neutralist liberals de-emphasize or sometimes overlook, namely *the right to culture*.** Thus, one of the first conceptual questions for us is what a right to culture looks like, and whether or not it would be consistent or redundant with other liberal rights. In the first section of the essay I consider these topics.

In the second section of the essay I develop a possible answer to the question of how the right to culture might be implemented within a liberal regime. As a pluralist, I do not think that there is *just one* answer to this question, since it is primarily a matter of domestic justice, to be settled within the political discourse of particular societies. However, if I successfully articulate a way to combine liberal and national commitments, my answer would not only show the abstract possibility of combining such commitments, it might in turn suggest other avenues.

My suggestion is that the right to culture should be understood primarily as a negative right, guaranteed by the government, but exercised below the level of the state within the institutions of civil society. The right to culture is primarily a negative right: a right to be left alone to develop one’s interests. This need not preclude the state from offering assistance to

develop the right to culture. Take a parallel right, ex. the right to the free exercise of religion. This too is primarily a negative right: the right to be left alone to practice (or not) any religion that is consistent with others' freedom of religion. Yet, most countries recognize the need for governmental mechanism to support religious practices. In fact, the attempt to completely eradicate state support for religion in the name of fairness is likely to be a disaster. The question for liberals is, and has always been I think, one of *balance*: not, "How can we eradicate religion and culture from the life of state?" but "How can the state support its citizens free practice of religion and culture without privileging one group to the point of domination or ignoring another group to the point of eradication?" And of course, this question is dependent on the particular groups at hand, and the shape and history of the society under question. Only through massive simplifications and idealistic assumptions can we posit only *one* kind of balance between culture and equality.

Asserting the right to culture within the institutions of civil society amounts to what Gans calls "a *sub- and iner-statist nationalism*." (Gans, 2000) I agree with Gans that a primary benefit of this position is that it separates the *cultural* form of nationalism from the *political* form of nationalism. Simply put: the political form of nationalism desires to create nation-states, or governments with sovereignty which reflect a national majority, that is, a majority based on culture (religion, language, custom or ethnicity). Gans believes (as does Tamir) that national self-determination need not entail political sovereignty. One effect of such a conception is to take away the force of Dummett's objection that ethnic conceptions of *citizenship* are inherently illiberal. Dummett's notion of "citizen" is too monolithic to capture the difference between *political* and *social* citizenship. Social citizenship refers to the extra-legal standing or social recognition that is allocated to members of the political community. (Shklar, 1991) Sub-state nationalism is consistent with the basic fairness that is central to liberalism, as long as we understand liberalism as a flexible philosophy which need not adopt "simple equality" as a desideratum. By "simple equality" I mean the idea that each person's treatment under law must be *exactly* the same, and that no difference in class, wealth, happiness, religion or personal satisfaction is tolerable. (Walzer, 1983)

## Section One: Liberalism and the Right to Culture

I begin with a quick sketch of the respective projects of two Liberal Nationalists, Yael Tamir and Chaim Gans.

In *Liberal Nationalism* (Princeton, 1993) Tamir argues that the right to culture is a basic right for members of nations, and that exercising this right is, under appropriate circumstances, consistent with liberal principles of fairness and justice. Unlike traditional liberal democracies, nationalist democracies will acknowledge a cultural basis for the state, allow immigration restrictions to maintain cultural unity, and root political obligations in felt identification with the nation rather than implicit contracts. Tamir views the establishment and promotion of culture as a basic right, yet as a liberal, she limits this right if national minorities are denied the ability to promote their own culture. The nationalism she favors is cultural, not political in the sense that a “nation” may not (need not) achieve political power or sovereignty. The state is not the nation; the former is a political instrument, the latter refers to a cultural group. A “nation” is a group that shares some objective features (typically language, customs, shared myths) of which its members are aware. National self-determination is the right to have one’s culture supported, e.g. through public resources; which is not to say the right to have political autonomy or authority.

Chaim Gans shares many of Tamir’s commitments, including the basic commitment to combine the values of nationalism and liberalism. One important difference is his explicit concern to make nationalism a “sub- and inter-state” phenomenon. (Gans 2000) In doing, he builds upon and completes the distinction between cultural and political nationalism. Gans believes that the right to culture entails three things: first, “powers and liberties to practice their culture”; second, auxiliary rights for protection culture, and maintaining cultural majority and vibrant public life of the culture; last, “if this is necessary” “rights guaranteeing their fair share in the government”. (2000, p.200) Gans argues against the traditional nation-state, in favor of multi-cultural states. In particular warns against the dangers of “cultural conversion” which is the notion that any newcomer to a state must undergo a wholesale conversion to the indigenous culture of that nation.

Gans emphasizes that *liberalism* grants a primacy to the individual over and above the group. “[L]iberalism can acknowledge the value of national groups only if it is based on fundamental interests of their *individual members* and if these interests are interest that could in principle be held by all human beings. These interests must take precedence over the value of

the national group, and not vice versa, as is the case in non-liberal cultural nationalisms.” (2003, p. 169) In his paper “The Palestinian Right of Return and the Justice of Zionism” (2004) Gans argues that non-liberal nationalism employs a “collective morality” which places the “normative priority of the national group over its individual members” and ascribes guilt to groups en masse, regardless of the culpability of individuals. Thus, the distinction between liberal and non-liberal version of nationalism hangs on the status of the individual under law and under public policy more broadly. The *practical* effect of the group rights approach (according to Gans) would be (1) collective punishment (holding an entire people, and their descendants responsible for crimes committed by only a few) and (2) justification of the suppression of the rights of the individual for the purpose of creating an ethnically homogenous region, ethnic cleansing for example.

Gans explicitly endorses a *multicultural* version of society. (2003, p. 87) Gans holds that while the *statist* conception of liberal nationalism would lead to domestic injustice, in particular a division between two ‘classes’ of citizens based on the nation-state’s preference, his alternative would not. The non-statist form of nationalism would lead to “a society that is less homogeneous and less monolithic and more pluralistic than the ideal society implied by the notion of the nation-state. It is open to immigration without the encumbering requirements of cultural conversion.” (ibid)

I can at this point state more explicitly an answer to the question “What is the right to culture?” Tamir defines the right to culture as “the right of individuals to choose their national identity” and “their right to adhere to the national culture of their choice.” (1993, p. 42) Similarly Gans asserts that “members of groups sharing a common societal culture and history have fundamental interests of moral value to adhere to their groups and preserve it for generations.” (2000) Both Tamir and Gans recognize that the right to culture is merely *one among many* liberal rights and thus its protection must be weighted against the protection of other rights. There will be a pragmatic balance between this and other conflicting rights. Conceptually, there is a basic tension between the development of culture the more basic right of *non-discrimination*, which itself is an expression of the right to *equal protection under the law*. Gans argues that in true *nation-states*, those political societies where the state expresses the culture of the majority there is “at the very least, some *prima facie* injustice towards the citizens of these states who are not members of the majority nation.” (2000) This injustice can not be remedied through minority rights which would only more “firmly establish them as second class

citizens.” (ibid) The prima facie objection to a right to culture holds that this right is necessarily illiberal because it violates the enlightenment principle of *equality*; the right to assert one’s culture cannot be simultaneously guaranteed to all, since there will be competing claims over land, political instruments, and social goods. For instance, immigration restrictions based on religion, language or ethnicity are sometimes seen as entailed by a right of culture; the Israeli right of return, for instance, is often justified in the name of the right to keep Israel a Jewish nation-state. Liberals often criticize the law of return as a type of *discrimination*. The strategy of the liberal nationalist: to show that states and bounded political communities with distinct ideals about who is and isn’t a member; discrimination of some kind is necessary for the existence of the state. While Tamir and Gans have slightly different takes on the right of return, both argue that this right is legitimate *only if* there is a similar right guaranteed to all members of the state, not just to a privileged majority. (See Tamir 1993 page 161; Gans 2003, 130-4)

The right to culture, then, amounts to an *individual’s* interest in maintaining and preserving his or her linguistic and religious customs across generations, with other members of this culture. This right is like other liberal rights including the exercise of religion and free assembly. In fact, some liberals argue that there need not be a separate right to culture, since the exercise of this right is entailed by pre-existing freedoms. (Donnelly 2003) But against this position it should be noted that the traditional categories such as religious freedom have been taken to imply a state’s interest in preserving and maintaining particular civil social institutions through funding and other government protection, whereas often cultural rights (ex linguistic rights) have not been accorded such protection. Thus, for pragmatic reasons if for not others, the explicit recognition of a right to culture seems appropriate. The 1966 International Covenant on Economic, Social and Cultural Rights, ratified by the General Assembly of the United Nations explicitly recognized the right to pursue “cultural development” as a part of a “people’s right to self-determination.” (Part I, Article 1) The UN Universal Declaration of Human Rights recognizes the “right to a nationality.” (Article 15) Thus, while the existence of a right to culture is relatively widely recognized, the precise content and implications of this right—in particular how to exercise it within the constraints of equal treatment and non-discrimination—remains in question. As an attempt to address this implementation, I turn to a case analysis of three liberal societies: the US, France and Israel. My argument is that a separation of political and civil culture will afford the space for the assertion of cultural identities, below the level of

the state. The institutions of civil society can, hopefully, provide the opportunity for the expression of national identities, without incurring the disadvantages of statist nationalism.

## **Section Two: Culture Case Studies: Israel, USA and France**

The following picture of three societies is a crude oversimplification for the purposes of theoretical clarity. I outline three social models, which I construe as “ideal types” (in the Weberian sense). Each social model attempts to balance the right of culture against other standard liberties. I present these three models according to a spectrum. On one side of the spectrum is the attempt to divorce culture from politics (Republicanism, France). On the other side is the attempt to synthesize culture and politics (Communitarian, Israel). In the middle is the attempt to relegate culture to a civil social level, and preserve a supra-cultural state (Multiculturalism, USA).

In my formulation, France represents the most *Republican* society. Its famous Déclaration des droits de l’homme (Declaration of the Rights of Man), proclaims what I will call a *universal* model of citizenship. Citizenship is construed as participating well in the formation of the *volonté général* (general will). Church and state are radically separated. No official religion is recognized. In one’s role as a citizen, one’s religiosity is non-existent. The French principle of *laïcité* holds that the state must be a completely secular institution. The French Constitution asserts that “France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. It shall be organised on a decentralised basis.” (Art. 1) The universalistic conception of citizenship implies that devoting one’s life to the state is the highest of goods, and that all “private” or “particular” aspects of one’s identity must be subordinate to the commonweal. The state expresses the pure rational will of the sovereign individual, not the interests of a thickly embedded person with multiple loyalties, duties, commitments, and roles to play. Republicans like Rousseau even toyed with the notion of a state religion which might take the place of people’s cultural affiliations, including their religious traditions. Rousseau’s very non-multicultural vision for a politics would have the effect of obliterating the sphere that Hegel would call “civil society,” or the networks of voluntary associations which have come to characterize modern societies.

The United States represents the middle position, which I will call *Multiculturalism*. While its founding documents use the same universal language as the French, three factors distinguish it: first, there is less built-in secularism; second, as Tocqueville observed, there is longstanding tradition of voluntary associations in the USA, which has created the space for the assertion of multicultural identities within civil society; and lastly, as Michael Walzer (1996) notes in his work on American citizenship, we are a society of immigrants. The US has no ancient cultural majority. Our history is a recent history. Immigration—both forced (slavery), and voluntary (1880s)—have been definitive. These three factors add up to a different model of citizenship. Political participation is not emphasized as an expression of civic virtue; rather, civic virtue is construed as leaving one's neighbor alone. Religious expression is considered primarily a negative right: the right to not be interfered with by the government or by one's neighbor. Assembly in civil society is seen as a healthy and normal part of social life, and there is no regret—not much, usually—when a person adopts an “apolitical” attitude and would rather develop his interests (wealth, leisure, family) at the expense of the commonweal. While the US has a history of restricting immigration in order to shape its ethnic demography, this history is relatively isolated, spanning between 1880-1920. These restrictions tended to be illiberal, and not within the scope of a liberal nationalism because they were based on economic domination—the need for cheap labor brought diversity and immigration; the competition over scarce jobs combined with an anxiety over different cultures caused a backlash and an illiberal set of immigration quotas. These restrictions were debated using the terms of “good citizenship” yet ultimately, they were based on the thesis of cultural and racial superiority: the claim that whites were superior to non-whites. In sum, the model of citizenship in the USA is based on the principle of voluntary acceptance of political principles (the US constitution), a culturally agnostic state, and a robust and often chaotic civil society where negative freedoms prevail, where *social* citizenship (one's ability to navigate civil society) is as important as political freedom.

Israel, the youngest state, is the most *Communitarian*, because it is the most cultural, particular, concrete and religious state. Israel offers the least universal view of citizenship since, whether implicitly or explicitly, full citizenship is reserved for Jews, and non-Jewish Israelis are politically alienated, by virtue of their culture, religion, and language.

With these ideal types in mind, we can move to the question of how culture is managed within Republican, Multicultural and Communitarian societies. Let's begin with Israel, which is my model of a particularist, cultural, concrete, communalistic society. Israel's existence as a state is based on the protection of Judaism as a culture, religion and ethnicity. Israel's Basic Law on Human Dignity and Liberty (1992) states "The purpose of this Basic Law is to protect human dignity and liberty, in order to establish in a Basic Law the values of the State of Israel as a *Jewish and democratic state*." Unlike most other modern states Israel expressly privileges a national cultural majority. The Israeli state is the political instrument reflecting the will of the Jewish nation. By "nation" I mean a group that is aware of its own unity of culture, language, and/or religion. Whereas by "state" I mean the machinery of government. For current purposes, the distinct feature of the Israeli model is that Jewish *culture* is built into the framework of political and social institutions, rather than relegated to a sub-state institutions of civil society, including schools, business corporations, professional associations and so on.

Using the vocabulary of liberal nationalism we can say that the Israeli state was expressly created in order to protect the right of Jewish individuals to preserve Jewish culture. From the perspective of *liberalism*, which takes the protection of individual liberties as its primary goal, there are likely to be two worries about the Israeli model. [1] First, respecting the practices of a given cultural group may leave the internal orderings and norms of the group intact and relatively isolated from external legal challenges. (Walzer, 1997) Leaving traditional cultures alone may leave intact practices that are otherwise undesirable from a liberal point of view, for example, male domination.

[2] Second, and more fundamentally, if a state makes ethnicity an essential component of full citizenship, then ethnic minorities might be relegated to second class citizenship. (Dummett 2001; Gans 2000) Israel is the most dramatic, but not the only example of a state with an ethnic notion of citizenship. Germany and Japan, for example, also define citizenship in terms of blood rather than strict political loyalty. But Israel has become the world-wide symbol of an ethnic state (even more so than Iran), and the Palestinians have become the worldwide symbol of resistance to second-class citizenship. Liberals would object to an ethnic conception of citizenship arguing that it poses an inherent threat to equal citizenship and political non-discrimination.

At the other end of the spectrum from the Israeli-communalistic model, we can think of a society where citizenship is a-cultural, universal, abstract and individualistic. France is approximately such a state. There is a sharp separation between the state and culture. Although France is believed to have more Muslims and Jews than any other Western European country, there is no official statistic because the government refuses to track the ethnicity of its citizens. The notion of citizenship in France is abstracted from all cultural particularities.

From the side of nationalism (or its cousin views Communitarianism and civic republicanism), there are likely to be two characteristic objections expressed about this model. [1] First, Civic Republicans often remark that separating culture and politics might deprive citizens of the feelings of community and belonging necessary to bind them to their state. (Sandel 1996) Yael Tamir accuses liberal regimes of tacitly relying on a nationalistic conception of community to which they are not entitled under the principles of liberal neutrality. (1993, p.117)

Specifically, one might argue that the radical separation of culture and politics leaves citizens alienated because their public identities are disembodied, fleshless, language-less and flat. This worry is distinct from the worry that a minority will feel alienated from political expression of the majority culture, since in this case we are assuming that *no* culture is expressed politically. (For instance, the proposed headscarf ban in France was amended to include *all* religious symbols, not just the hijab, but also large crosses, kippot, and Sikh turbans. And in a similar case last year in the USA in the state of Florida, a school board reacted to a Muslim family's request that Eid-al-Fitr be officially recognized by canceling all religious holidays, which left everyone unsatisfied.)

[2] Second, one might claim that a radical separation of culture and politics would amount to destroying (or failing to recognize) an important liberal right, namely the right to culture. This last objection, however, assumes that the only or best way to protect culture is through the state, which is contentious. Unlike the Israeli-communal model, the French model does not build into the state any concern for the protection of a given culture, language, religion or ethnicity.

Do these comments suggest that the USA is a middle ground between implausible extremes? I offer a hesitant yes. I wish to explore a political notion, very common in the USA, which seems instructive. This is the idea of a *hyphenated identity*, which refers to our ability to

identify as African-Americans, Muslim-Americans, Jewish-Americans, Irish-Americans, and so on. (Walzer, 1996) These identities capture a person's sense of political loyalty on the one hand (commitment to the rule of law, basic liberties, essential rights) and cultural loyalty on the other hand (ethnic ties, language spoken in the home, religion, connections to the old country).

The basic social structural feature necessary for an acceptance of hyphenated identities is a separation of *civil society* and *the state*.<sup>i</sup> The state provides a universalizing identity—citizenship. While civil society provides the opportunities for particularized identities—such as our identity as a merchant or scholar; man or woman; atheist or Mormon; Irish or German or Sri Lankan or Basque.

On the communalistic, Israeli model, the reason that hyphenated identities are unlikely is that there is an insufficient separation of these spheres. Cultural pluralism becomes marginal or impossible. This is true not only for non-Jews in Israel, but also for non-Orthodox Jews in an Orthodox society. (For example, marriage between Jew and non-Jew is legally impossible, and non-Orthodox Jews cannot obtain a marriage license.)

The universalistic French model meets the social structural requirement above—there is indeed a much more rigid separation of state and civil society than in the USA. But the French have a long standing opposition to hyphenated identities. This opposition may be traced to the spirit of a robust *Republicanism*, which would place the citizens' commitment to the republic above all private interests. The interests in retaining a religion, for instance, would be considered a "private" interest, protected by the state, but not explicitly part of the "general will" or the sovereign body of the nation. Here we should think of Rousseau, and his claim in *du Contrat Social* that social factions of all kinds would destroy *la volonté général*. Rousseau's long discussion of "the people" in BII of the Social Contract is not an explicitly cultural conception of "people"; it is not the equivalent of the German "Volk". Rousseau has a political conception, according to which a people is formed by a collective, customary commitment to the rule of law and to the values of equality and freedom. But we must be careful not to assume that Rousseau is just the Rawls of another century, wishing to completely divorce culture from politics. He says that the formation of a nation would require a unity of interest: "What nation then is adapted for legislation? That which is already united by some bond of interest, origin or convention, but has not yet borne that yoke of laws." (BII: CH X "The People) There is a pluralistic strain in Rousseau, although it is the minor theme, not the major theme. He writes that:

the general objects of every good institution ought to be modified in each country by the relations which arise both from the local situation and from the character of the inhabitants; and it is with reference to these relations that we must assign to each nation a particular system of institutions, which shall be the best, not perhaps in itself, but for the State for which it is designed...In a word, besides the maxims common to all, each nation contains within itself some cause which influences in a particular way and renders its legislation suitable for it alone. Thus the Hebrews in ancient times, and the Arabs more recently, had religion as their chief object, the Athenians literature, Carthage and Tyre commerce, Rhodes navigation..." (Ibid)

The major theme of Rousseau's Republicanism is the unity and in fact unanimity of the *general will*, which requires the suppression of the private will. "Every individual may, as a man, have a particular will contrary to or divergent from the general will which he has as a citizen..." However, Rousseau continues, if the citizen were to regard loyalty to his particular will as more valuable than his commitment to the general will "the progress of such injustice would bring about the ruin of the body politic." (BI: Ch VIII "The Sovereign") The most pressing threat to the general will is not the individual's own commitment to principles of free development of talents, interests or reason. The greatest threat comes from "partial associations".

[W]hen factions arise, and partial associations are formed at the expense of the great association, the will of each of these associations becomes general in relation to its members, while it remains particular in relation to the State: it may then be said that there are no longer as many votes as there are men, but only as many as there are associations. The differences become less numerous and give a less general result. Lastly, when one of these associations is so great as to prevail over all the rest, the result is no longer a sum of small differences, but a single difference; in this case *there is no longer a general will*, and the opinion which prevails is purely particular. (BII: CH III)

Rousseau goes on to note that if partial factions cannot be avoided, it would be best to have a plurality of associations so that they might cancel each other out. But his preference is clear: a pure Republicanism requires a single general will and not a clash of plural associations like religious associations. Rousseau's view of the danger of partial associations would later be revived directly in relation to the question of Jewish emancipation in France. The debate in the National Assembly over whether Jews should have full political rights turned on whether or not Jews would give up aspirations to form a distinct *nation* within the French nation. If the Jewish community were willing to give up this, then they would be legally emancipated. Their

emancipation would be as *individuals*, however, not as a group. “To the Jews as a nation, no rights, but to the Jews as individuals full rights” would be the slogan carrying the day.

The Rousseau principle of a general will with no partial associations helps illuminate some recent French politics. The proposed head scarf ban is solidly in step with Republican anti-“tribalism.” But, the French separation of culture and politics, civil society and the state, threatens the right to culture because it forces culture to become becomes subterranean, privatized, atomized. In France the public expression of culture is seen as a *threat* to citizenship, a threat to the law, and a threat to the state. From this perspective, the headscarf ban is a step in the wrong direction, for it is based on the assumption that a French citizen cannot at once be *Muslim and French*.

Assume that I am correct in favoring a social model where cultural pluralism is expressed through the quasi-state institutions of civil society like public schools and family law, and that the right to culture is not encompassed in the right to privacy or free assembly. I am recommending that the *right to culture* become a recognized individual right, and that this right be seen primarily as a right to express one’s cultural loyalties *below* the level of the state. By recognizing the group conditions for a right to culture (ex. the need for public recognition), this view would avoid an excessively privatized version of culture, which would reduce cultural rights to individual consumption, celebrating holidays in one’s home, hiding one’s skull cap under a baseball hat, shaving one’s beard—in short public assimilation. In order to support the individual right to culture, liberal democratic regimes would have to tolerate (in some cases support) different customs and languages. This would rule out, for example, making English the official national language of the USA. And it would also rule out the recent legislation in the US like the “Military Commissions Act” which amounts to making any public expression of Islamic faith a justification for incarceration without due process.

Let us return to the characteristics of the Communitarian--Israeli and the Republican--French model and see how the proposal for hyphenated identities fares.

The first question regarding the Israeli model was whether tolerance of a cultural group might allow coercion to take place within the group. Feminists in France, for instance, argue that being “tolerant” of fundamentalist interpretations of Sharia is illiberal because of women’s subordinate role. In the USA, the famous case was in the late 19<sup>th</sup> C (Reynolds v US), where Mormon polygamy was ruled illegal; such “strange” and “immoral” behavior was not protected

under the freedom of religion. As mentioned at the outset of this paper, all three social models must balance rights of the individual and right of the group. In societies like the USA and France, the legal system nearly always favors the rights of the individual against their group, as demonstrated with the headscarf ban and the rejection of polygamy. Thus, the worry that tolerating traditional group practices would infringe on the individual rights of members of traditional groups is less applicable here. The more pressing question is whether traditional customs and cultures can be protected at all in societies like France and USA, given the strong adherence to the rights of individuals. [more below]

The second concern of the communalistic model was that minority cultures might be relegated to second class citizenship. Now we must ask if the civil-social model, which separates culture and politics, offers a corrective this problem. Though both the French and the American model claim that citizenship is a universal category, abstracted from all but the *most minimal cultural* roots (ex. common language for political discourse), each country has been hostile in various ways to cultural minorities. In theory, both the French and the American model eliminate any sense of alienation based on not being a member of the dominate nation, and thereby not being entitled to the same political rights as the explicit or implicit cultural majority. In theory then, the commitment to a *color blind, culture blind* government eases the problem of second class citizenry. Or at least, such problems are not as great as in strongly communalistic societies like Israel.

So as we might expect, the major difficulties facing the Israeli-communalistic model are not endemic to the American, civil-social model. Given that the American model is closer to the French, the characteristic problems of the French model are likely to be more relevant.

[1] First, would an a-cultural state which attempts to rise above all particular, substantive conceptions of the good life fail to generate a sense of communal belonging and loyalty among citizens? If culture is not expressed politically, through the very conception of who is a citizen, will citizens feel alienated from their state?

Not necessarily. I am not advocating the *suppression* of culture, which would indeed be imperialistic and alienation. Rather, I am advocating that states not build into their machinery, myths and laws an ethnic conception of who belongs.<sup>ii</sup> If political patriotism and ethnic solidarity as separated, then what space remains for each?

A citizen's sense of *politically loyalty* would come from adherence to legal institutions, a constitution and basic political rights and duties.<sup>iii</sup> Political loyalty would be detached from ethnic and religious solidarity. Here we see a large difference between the history of French and American Civic Republicanism respectively: the former has tended to see local associations, whether cultural, religious or otherwise, as hostile to political solidarity. The French model assumes that political patriotism must be based on the loyalty of a *nation*—an ethnically, culturally homogeneous group, speaking the same language, and with the same religion (lapsed, secular Catholicism). Thus the need for *intégration* (assimilation). The US model is not based on a cultural, ethnic notion of patriotism. And for the most part, local associations are seen as the lifeblood of democracy, which support civic virtue rather than eroding and threatening it. True, ethnic nationalism is a sub-current in the US, both historically<sup>iv</sup> and contemporaneously.<sup>v</sup> But, The more the US moves in this direction, the less it lives up to its own implicit ideal of *tolerance* and *liberality*. Nationalistic movements in the USA are should ultimately be rejected because they are *illiberal* and hostile to the protection of basic rights. Cultural pluralism a necessary condition of modern liberalism not only because of the reasonable differences among citizens in a modern society, but also and especially because of the reality of immigration and globalization.

In sum, a non-ethnic conception of citizenship need not lead to political apathy and a sense of alienation from the institutions of government. I agree that if culture is completely repressed and privatized, then citizens will be resentful and experience a detachment from their state. (This seems evident from, for example, the Muslim riots in France last year.) However, there is less evidence that the *right to culture can only or best be protected if culture is built into the machinery of the state*. As I said above, the goal of a pluralistic liberal democracy is to create a sense of patriotism that is *independent* of, but not *hostile to* its citizens ethnic and cultural identities.

[2] Next, I mentioned that the a-cultural model of the state may not protect the right to culture, since the government would not been seen as an expression of the self-determination of a given people. However, building culture into the foundation of the state is merely *one possible mechanism* for protecting culture. As I've said above, this shouldn't be the only or primary notion of a "right to culture." In concrete terms, modern liberal democracies might protect the right to culture at a sub-state level in the following ways:

- Negative linguistic rights (the rights of non-interference in conducting one's self in a non-dominant language; ex. free press and the right to conduct business, private schools, and associations of all kinds in one's native tongue).
- Limited positive linguistic rights: the government would non-prejudicially support non-dominant languages by making vital public services available in these languages if there are large minorities of a single language.
- A flexible legal system which didn't make illegal "strange" customs just on the basis of their "strangeness." (ex. Reynolds v. US, 1887) [...other concrete solutions? Cf. Kymlicka and Gans]
- Tamir has suggested the notion of a "cultural voucher", which would be a way for the state to provide money (tax breaks) to associations that maintain cultural activities. This would put cultural associations on the same footing as religious associations, and private schools.

In addition to these specific point about law and public policy, I reemphasize an early point, namely that a pluralistic liberal democracy must also resists the internal reactionary trends towards ethnic nationalism. Like many legal scholars in the USA I find it astonishing, perhaps horrifying, that under our current administration the "Military Commissions Act" has made it legal to imprison for an unlimited amount of time anyone suspected of terrorism, whether in the US or abroad. It is a short step from here to the political and legal disenfranchisement of any ethnic or religious Muslim or Arab. At least some conservative commentators are honest enough to admit that the US is embracing the same logic it used in 1942, when under FDR it imprisoned over 100,000 Japanese Americans. We are witnessing another dark moment of American history where the expression of cultural identities is tainted with disloyalty, un-American-ness and treason. Thus, I recommend the pluralistic model of the US, while also harshly condemning the US for, at this moment, failing to live up to its own best principles.

To draw this section to a conclusion I would like to restate what is entailed by the right to culture. The right to culture ought to be understood as a liberal, individual right. Even for states like Israel, which base their conception of citizenship on a communal, historical, and ethnic ties, as a matter of both justice and practicality, there seems to be no avoiding cultural pluralism. So even at the expense of a weakened sense of patriotism, communalistic societies ought to think of culture as best expressed in public, but not governmental spheres of life. The ideal of *citizenship*

in liberal democracies, ought to be that of a person who is a voting, deliberating member of the polis. The French model has the problem of not leaving enough of a public space for the expression of cultural identities; or rather for the expression of *pluralistic, competing* cultural identities. The American model, though not without its own risks and potential failures, has the advantage of protecting the right to culture as a public, but extra-governmental right.

## **General Conclusions**

1—Liberal Nationalism may require different structures in different national contexts. As I've construed it, liberal nationalism is a position which emphasizes the need for liberal societies to recognize the promotion of culture as a social good to be protected in similar ways as the free expression of ideas, the liberty of conscience, and so on. A liberal society is one where the basic structure of society is liberal (it preserves individual freedoms through, for instance, a bill of rights, including liberties of life, property, conscience, due process, non-oppression). Reasonable nationalism refers to the desire of a cultural group to preserve itself over generations by living according to its own conception of traditional linguistic, religious and familial customs. Nationalistic values will take different shapes in different domestic societies based on the particular balance struck between universal political citizenship (the principle of strict equality of treatment and blindness to particularities of identity like religion or ethnicity) and civic social citizenship (where particularity is expressed, celebrated and protected). The three models I discussed are all liberal: the French/Republican model, the American/Multicultural model, and the Israeli/Communitarian model each strike a quite different balance between culture and liberalism. Concretely, my liberal national recommendations have moved in opposite directions for Israel (moving to the liberal end) and France/USA (moving towards the nationalistic end). These recommendations have proceeded according to the spirit of pluralism and sensitivity to national context.

2—One of the implicit conclusions that I have drawn (which I now make explicit) regards the initial question of an impasse between Rawlsian liberalism and ethnic nationalism. Is there a contradiction between Rawlsian neutralists liberalism—based on an overlapping consensus of comprehensive beliefs—and modest versions of liberal nationalism where the right to culture is protected? I believe not. If the right to culture is maintained at the civil social level, in parallel to the maintenance of religious freedoms, then there is no need for a culturally thick

state. The state may consider itself agnostic with respect to the truth content of different substantive conceptions of life, religious and otherwise. Tamir would disagree with this conclusion. She thinks that in any Liberal Nationalist society “unity rests not only on an overlapping consensus about certain values essential to its functioning, *but also on a distinct cultural foundation.*” (1993, p. 163; emphasis added) On the version of Liberal Nationalism that Gans and I favor, where statist aspirations are mellowed, there need not be a cultural foundation of the state.

3—This essay began with a quote from Michael Dummett expressing the common liberal worry that an ethnic conception of citizenship would disenfranchise and alienate minority ethnicities. “No state” in Dummett’s words “ought to take race, religious or language as essential to its identity.” I noted that, in essence, Gans agrees with Dummett on this point. What Dummett fails to consider is the possibility of *sub-state nationalism*, which is the position that “nations” (groups united by language, religion, ethnicity and/or culture) may preserve their unity and integrity without political sovereignty understood in the classic sense (powers to make war, have a standing army, issue passports, etc.). (Gans mentions European consociationalism as one possible model.) I would add to what Gans has already said that liberal societies can tolerate group differences within civil society and social citizenship, so long as these differences do not erode equal *political* citizenship. A pluralist approach to equality (like that of Michael Walzer) might provide useful in articulating why a commitment to liberal equality is consistent with a domestic civic society with great internal differences. (1983)

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<sup>i</sup> I prefer this distinction over the public private distinction, since "private" implies individual, and yet we know that cultural loyalties are group ties, which need communal, public spaces.

<sup>ii</sup> A further comment is that many Zionists argue that in the case of Israel, the only way to protect Judaism was (and is) through the creation of a state. Historically, I am willing to grant the truth of this statement. We must remember that no nation existing in 1947 was willing to absorb the Jewish refugees of the Holocaust. But when pressed with the question of the justice of Zionism now, we see that Israel must face up to the same problems as any *liberal democracy*, namely that the prolonged suppression of minority cultures not only creates instability, but is illiberal.

<sup>iii</sup> [Note to self: this is a sociological question.]

<sup>iv</sup> This worry was expressed very forcefully by Teddy Roosevelt in 1915: "There is no room in this country for hyphenated Americanism. When I refer to hyphenated Americans, I do not refer to naturalized Americans. Some of the very best Americans I have ever known were naturalized Americans, Americans born abroad. But a hyphenated American is not an American at all. ... The one absolutely certain way of bringing this nation to ruin, of preventing all possibility of its continuing to be a nation at all, would be to permit it to become a tangle of squabbling nationalities, an intricate knot of German-Americans, Irish-Americans, English-Americans, French-Americans, Scandinavian-Americans or Italian-Americans, each preserving its separate nationality, each at heart feeling more sympathy with Europeans of that nationality, than with the other citizens of the American Republic. ... There is no such thing as a hyphenated American who is a good American. The only man who is a good American is the man who is an American and nothing else." If we substituted "French" for "American" in the above quotation, it might easily pass as a speech from Villepin or Chirac or any number of French MPs. And though we can't quite imagine George Bush saying this (at least not publicly), there are more conservative members of both American parties, who would say the same thing today.

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<sup>v</sup> In the last eight or so years, we in the US have been doing precisely this. Ex. the movement for a national language; the military commissions act; the restriction and criminalization of immigration