CHAPTER IV: TOLERANCE, NEUTRALITY AND GROUP RIGHTS

1. INTRODUCTION

One key element of the modern liberal state is neutrality: the obligation to refrain from intervening to promote particular life plans or conceptions of the good, while ensuring equal opportunities for all citizens to pursue their particular ends. The liberal tradition (historical and recent) offers several weighty arguments to justify such a constraint, which shapes the realm of liberal politics by defining the grounds for political legitimacy.

It is often argued that neutrality, as a normative standard, makes it impossible to use group rights as a means of confronting multiculturalism. In order to respect neutrality, it is claimed, we should rather draw on ideas of mutual tolerance to articulate a model that can consistently guarantee the fair coexistence between different cultural groups without jeopardising the traditional role of the state within the liberal tradition. This chapter explores the normative grounds and implications of what may be called “the tolerance approach,” as an alternative strategy to deal with the conflicts posed by multiculturalism. Critics of group rights who endorse this approach stress the potential of tolerance, as a political virtue, to accommodate cultural minorities and other group-based identities. This contention will be developed and scrutinised in the following pages, in order to assess to which extent it is justified. As will become apparent, the theoretical premises underlying the tolerance model differ substantially from the starting points and lines of reasoning of most advocates of group rights, thereby offering a different account of how liberal democracies should deal with these groups. Yet, it is important to note that both approaches acknowledge the legitimacy—at least prima facie—of the interests of cultural minorities and thus open an avenue for their accommodation.

In what follows, the main focus will be a critical examination of the tolerance approach that different strands of contemporary liberal thought regard as a key answer to challenges of cultural diversity. As I will explain, there is a great deal of disparity in the form this answer takes, for not all liberal theorists that share this approach see its foundations in the same set of values or moral commitments. Nonetheless, all these variations involve a similar challenge to liberal multiculturalists and their defence of group rights.

The aim of the following sections is to show that, despite the initial appeal of the tolerance approach, there are several shortcomings in the formulation of tolerance and neutrality that underlie its different versions, and that these shortcomings lead to
an inadequate view of the role of the state in multicultural settings. More precisely, proponents of this approach tend to assume an interpretation of neutrality that distorts the distinctive meaning of this ideal within the liberal tradition, while others misinterpret the point of the claims at stake and, as a result, propose institutional solutions that conceal cultural privilege and political exclusion. Contrary to what has become commonplace among critics, a more detailed analysis will prove that not only are group rights compatible with state neutrality but that, additionally, they can serve a crucial function in fully realising this central feature of the liberal tradition. On this understanding, I shall ultimately conclude that, in contexts of cultural diversity, the tolerance approach lacks a strong foundation for a normative theory of citizenship that embodies the ideals of freedom and equal respect. Moreover, applied to the legal domain, it promotes constitutional principles that are misleading and do not match with existing practices in most Western democratic countries.

In order to develop this argument, the following section starts by examining the connection between neutrality, tolerance and cultural pluralism. To elucidate this link is important, since it is commonly supposed that these three stand together in opposition to the view that justice in multicultural societies requires the recognition of group rights. I will analyse how that connection is construed and clarify in which sense critics hold that endorsing group rights requires abandoning the characteristic role of the liberal state. Section 3 questions the plausibility of a view that identifies liberalism with a “hands-off” approach to culture, as is usually suggested by proponents of the tolerance model. In fact, cultural intervention and nation-building have been strong elements of the liberal tradition, both theoretically and historically, and I will sketch this connection based on insights from the recent literature on nationalism. Section 4 shows that the link between liberalism and cultural intervention is not confined to history but continues into the present. Hinting at arguments I will develop in following chapters, I will argue, along the lines of liberal multiculturalism, that mere abstention from the cultural sphere is impossible for the modern state. Finally, in Section 5, I seek to demonstrate that the tolerance approach does not exhaust the ideal of neutrality in liberal thought. Even under the dominant understanding of this ideal—as justificatory, rather than consequential, neutrality—group rights are not necessarily in conflict with the idea of a neutral state, but can, on the contrary, help to fully realise it. Beyond this claim, however, and insofar as liberal states have always been involved in the promotion of particular cultures, the idea of consequential neutrality allow us to capture the importance of recognising group rights as an element of—prima facie—equal respect for different ways of life, worldviews and conceptions of the good.

Before entering into a more detailed discussion of neutrality and tolerance in their different forms, however, it is important to clarify the scope and limitations of this framework for the discussion on group rights. Two points are central in this respect:

Firstly, it is important to note that, as an objection to group rights, neutrality is not always properly invoked. As indicated earlier, some authors claim that affording rights to cultural minorities will lead to the violation of the freedom and individual rights of their members and therefore to the neglect of state neutrality. This is, for example, the position of Comanducci, who rejects what he names “positive cultural rights” on
these grounds. Garzón Valdés also argues that public recognition for ethnocultural identities is ethically unacceptable, as it puts individual autonomy at risk.

But framing the problem in this way, these authors cannot appeal to “neutrality” in any meaningful sense. Instead, they should argue that the type of interests underlying group rights—i.e., the relevance of cultural belonging, the recognition of identity, the preservation of culture—are incompatible with freedom and, therefore, the state is not compelled to remain neutral. For one thing, as will become apparent throughout this chapter, the central role accorded to neutrality in the liberal tradition is mainly motivated by an optimistic view concerning the possibility of reaching a consensus on the principles that should govern political institutions, notwithstanding the different, opposed, and even incompatible values, interests and conceptions of the good existing in society. Such pluralism should be respected through a policy of neutrality precisely because it is a precondition for—and a result of—freedom, and liberals have traditionally understood that protecting freedom constitutes the best way of respecting individuals. This justification defines the scope of neutrality, or so I will argue.

There are, of course, different interpretations of what protecting freedom requires. From a conception of liberalism based on autonomy, which Garzón Valdés and Comanducci defend, state neutrality would be unjustified whenever group rights were to threaten the autonomy of members of cultural minorities, since it would be inconsistent to say that public institutions should refrain from intervening when the very value that justifies this policy is disputed. Yet not all proponents of the tolerance approach equate freedom with autonomy—as we will see, theorists like Kukathas defend a rather minimalist conception that takes state indifference much further. In any event, the relevant point here is that state neutrality applies as long as the underlying values that justify this principle are not breached.

Secondly, some authors see the common claims of cultural minorities as mere preferences or wishes, insufficiently important to justify the use of the language of rights. On this understanding, while people may have an interest in belonging to their own culture, or are willing to see their distinctive cultural features represented in the public space, strictly speaking, these interests are not eligible as grounds for rights. As Waldron affirms, respect for people is not a demand without limits and it is generally understood that the language of rights does not exhaust the normative universe. It is possible for the government to deal in different ways with preferences that lack the necessary moral urgency that is associated with rights, including asking citizens to give up their demands when satisfaction becomes too costly. It might also be that some of these preferences are simply a matter of taste, whereas rights must be reserved for what we truly regard as basic needs for human well-being. That is why the idea of primary goods plays a central role in Rawls’ distributive model, even though it has non-neutral effects in all life plans.

Following this logic, it could be argued that, by demanding group rights, cultural minorities unreasonably expect the state to meet their “expensive tastes.” This reasoning implies that the interests underlying the kind of claims at issue are not basic or fundamental enough to be taken into account when assessing the fairness of a particular distributive scheme. This argument seems to inform the position adopted by those who oppose group rights, but see no problem in a scenario in which cultural minorities
simply pay for what they want. A similar line of reasoning admits that cultural structures may possess an independent value, but this is a merely aesthetic one. Thus, Catalans might worry about the disappearance of the Catalan language for the same reason that they felt that they had lost something of irreplaceable value when the Liceo in Barcelona succumbed to flames. While this sentiment of loss is understandable, it nonetheless falls short of justifying something like a “group right to culture.”

But, once again, if we lean towards one of these avenues to oppose group rights, the argument from neutrality is pointless; for defenders of a conception of liberalism based on neutrality do not claim that the state should be neutral in relation to all interests, nor that a theory of group rights should accommodate all types of cultural preferences. In general, a theory of rights does not aim to incorporate secondary preferences or wishes that are not linked to essential human interests or needs. Obviously, to determine what these interests and needs are is not an easy task and, as will become clear, there is much contestation over this central issue. For the moment, the main point I wish to stress is that, as an objection to group rights, the argument from neutrality is significant only if the legitimacy of the interests at stake (and their general compatibility with freedom) is, at least to some extent, presumed. As we will see, although it starts from a different conception of liberalism, the tolerance approach also needs to assume this, even if its defenders find group rights unnecessary for managing cultural diversity.

2. THE TOLERANCE APPROACH AND THE QUESTION OF GROUP RIGHTS

2.1. Tolerance and Neutrality in Liberal Thought

The centrality of state neutrality is a feature common to some of the most influential contemporary liberal theories. Scholars such as Ronald Dworkin, John Rawls or Bruce Ackerman invoke this principle as a standard to assess the legitimacy of political and legal decisions. Unlike truthfulness or generosity, neutrality is a political virtue: while it is not incorrect for a person to favour a certain conception of the good life, this preference is inappropriate if this person acts as a political agent undertaking a public function. It is important to note that, although the use of the term “neutrality” only acquires prominence in modern political theory, the germ of this principle has deep roots in liberal thinking. In particular, its source can be traced to the earlier concern for religious tolerance which led, in the sixteenth and seventeenth centuries, to the separation of the church and the state. Thus, famous essays such as John Stuart Mill’s *On Liberty* can be regarded as philosophical attempts to discern the limits of the state’s or society’s legitimate interference in the private sphere. At the time, the most frequent political reaction toward groups that dissented from predominant religious beliefs and social values was repression. For this reason, Mill was convinced that to establish and preserve limits to the interference of the state was a task as essential as preventing political despotism. Thus, he argued for an irreducible sphere of individual self-determination in which the state should refrain from intrusion:

There is a sphere of action in which society, as distinguished from the individual, has, if any, only an indirect interest; comprehending all that portion of a person’s life and conduct which affects only himself. ( . . . ) This, then, is the appropriate region of human
Hence, since its inception, liberalism was characterised by the adoption of a certain stance on the requirements that state coercion and state institutions must satisfy to be considered legitimate. The ideal of tolerance, implying equal respect for different conceptions of the good, attained a remarkable consensus among liberal theorists and can be seen as an important embodiment of the idea that persons should be treated as free moral agents, and as equal sources of valid ends. On this assumption, it seems plausible to claim that liberal states are not allowed to intervene in the realm of individual freedom, unless interference (aimed at imposing or inducing a person, or a group, to change her views on their conceptions of the good) is precisely intended to preserve a system of equal liberties for all. In sum, liberals consider freedom as an essential human interest that, as long as it does not offend or threaten the equal liberty of others, cannot be overridden simply by considerations of the social good.

The principle of state neutrality, in its modern formulation, follows from this reasoning. Initially, it demands non-intervention or, to use an alternative expression, states a duty of non-involvement. As I will explain shortly, for some scholars, the importance of this standard derives from one particular aspect of individual freedom, namely freedom of conscience. From this perspective, liberal states are supposed to use their coercive power only to safeguard the individual right to associate with others in pursuit of common goals (including the right to dissociate, to exit from a group), but not to align or orient their policies towards helping or hindering some particular groups and their collective ends. In the predominant contemporary conception of liberalism—that grounded in individual autonomy—the basic idea of non-interference has been essentially the same, but, in this version, the interpretation of the limits of tolerance tend to be stricter in order to preserve the value of autonomy comprehensively.

In any case, this model of political legitimacy played a crucial role in connecting liberalism with pluralism. Above all, the liberal commitment to freedom delineated the grounds of a certain approach to diversity—originally, the diversity arising from religious differences that resulted from the internal division of Christianity—based on tolerance. The prevalence of this perspective, however, does not mean that pluralism was historically regarded as valuable per se. In an interesting account of how different political regimes have institutionalised diversity, Walzer draws attention to the fact that, historically, the request for tolerance was neither closely related to a celebration of pluralism, nor to any enthusiastic encouragement of freedom of choice. Rather, he notes, the argument was that respect for the existing plurality of religious values and practices was instrumentally crucial to preserve the stability of the political order as well as social peace. Today, the configuration of constitutional arrangements capable of surviving in the face of pluralism subsists as a recurrent concern, although it is the emergence of various forms of recognition of cultural identities that is primarily viewed as a threat to the liberal order and, also, to the ties that bind people together under common political institutions. And, like in the past, a common answer to the perceived dangers is to pass over diversity by emphasising the value of
political tolerance. As James Tully puts it, the frequent solution is “to transcend, rather than recognise and affirm, cultural diversity.”

In short, contemporary liberal theorists associate the old principle of tolerance with public neutrality, with the idea of a non-virtuous state that respects the diversity of world views and conceptions of the good, which, in itself, is instrumentally important for honouring individual freedom. According to the prevailing view, a liberal state should neither promote a particular conception of the good life nor indoctrinate its citizens in accordance with a certain pattern or ideal of morality. In other words, the state must not judge which beliefs about value deserve greater respect nor must it support certain ways of life over others. On the contrary, one of its main functions consists in securing the preconditions that enable all individuals to form and lead a complete life without any discrimination.

It has become a familiar assumption that this view of political morality ought to be enforced by means of fostering an “impartial” public framework, one that allows the different comprehensive ethical or religious doctrines that shape an individual’s moral identity to arise and develop. As Dworkin contends, liberalism requires the government (and legislators) to be neutral with regard to competing conceptions of the good life. Moreover, he argues, this is the main element that distinguishes liberalism from conservatism and different forms of socialism. Similarly, in Ackerman’s version of the liberal state, neutrality is understood as an essential constraint on the kind of reasons that are acceptable in politics. “No reason is a good reason,” Ackerman writes, “if it requires the power holder to assert (…) that his conception of the good is better than that asserted by any of his fellow citizens.” As we will see in more detail below, this is also Rawls’ contention when he argues that a distinctive feature of political liberalism is that it gives precedence to the right over the good.

Besides the arguments of individual freedom and social peace, the quest for neutrality is also justified on the grounds that it is required in order to respect the equality between persons and groups. Dworkin has been keen to emphasise this point. Since citizens differ in their values and conceptions of the good life, “the government does not treat them as equals if it prefers one conception to another, either because the officials believe that one is intrinsically superior or because one is held by the more numerous or more powerful group.” Respecting this principle requires, according to a widespread opinion, a homogeneous constitutional scheme of individual rights and liberties. Thus, it is a common view, particularly among legal scholars, that endowing all citizens with the same set of civil and political rights, regardless of their religious, ethnic or cultural differences, is the best means to achieve equality. Both equality before the law and non-discrimination are generally understood as equivalent to a homogeneous legal status for all citizens.

In sum, contemporary liberal theory regards the ideal of tolerance as closely linked to different values: to the commitment to state neutrality, to the promotion of individual freedom and equal concern and to the preservation of social unity and peace. The idea of a uniform content of citizenship, together with a robust account of state impartiality and non-interference, are considered to provide the best foundation for satisfying those requirements. Liberal citizenship is largely defined in terms of inclusion into the political community. As far as the legal status is concerned, it denotes a unique, reciprocal and direct political relationship between the individual
Since all citizens stand in the same relationship to the state, they should have the same fundamental rights and entitlements. Furthermore, it is generally assumed that the universal incorporation of citizens into the state entails, by definition, a single legal system that must operate within each political jurisdiction. Because one central purpose of the rule of law in a constitutional state is that of instituting and upholding universal human rights and liberties, any explicit form of differentiated citizenship is regarded as suspicious. Admittedly, asymmetries and exemptions do exist in today’s democracies that may be explained or even justified by pragmatic considerations applicable to particular contexts. Yet they tend to be conceived as deviations from, or inconsistencies with, the vision of the political community that is congenial to liberalism; that is, they are often regarded as a potential threat to liberalism’s constitutive aims and principles or justified for reasons of security and peace, not of justice. For this reason, Tully argues that modern constitutionalism can be defined as requiring a uniform constitution, in contrast with ancient constitutions that incorporated a variety of local customs and legal statuses.

2.2. Neutrality and its Tension with Group Rights

As indicated, a strand of contemporary liberal thought—which is mainly represented by Kymlicka’s influential work—has responded to the problem of diversity by advocating group rights for particular cultural minorities. Implicit in this response is a rejection of the idea that the state should take a “hands-off” approach to issues of culture and thus avoid recognising particular identities, loyalties or ethnicities. However, for critics, only the latter approach can plausibly ground a liberal perspective on diversity, for it remains consistent with the traditional views on tolerance and neutrality that are at the centre of this tradition. The reluctance to accept the idea of group rights is deeply connected to this legacy. More specifically, liberal commentators often question the compatibility of group rights with the commitment to state neutrality. After all, advocates of group rights generally presuppose that cultural membership can generate some kind of legal and political differentiation, an asymmetrical regime. This would entail, critics contend, the salience of ethnicity in public life and the fragmentation of society, for the state would act to privilege certain groups as well as their members’ loyalties and conceptions about value. This active involvement in the preservation of diversity, it is argued, has the potential to threaten equal membership in the state and to erode the significance of common citizenship embedded in liberalism. In short, the idea that liberal democratic values call for a constitutional regime that incorporates group rights as fundamental rights is regarded as incoherent. On the contrary, according to opponents, those values would be threatened by efforts at legitimising cultural identities and attachments through granting minorities public support and explicit recognition. Moreover, in Brian Barry’s view, multiculturalism (understood as a normative policy implying the recognition of identity groups) is only a “formula for manufacturing conflict, because it rewards the groups that can most effectively mobilize or make claims on the polity.”

Yet this conclusion, it is often remarked, does not necessarily lead to an underestimation of diversity. Nor does it imply a denial of the legitimacy of the interests minority cultures wish to see protected. Exponents of the tolerance approach typically
maintain that the rejection of group rights does not amount to generally denying the value of communities and of people's attachments to their own cultures. For them, privatising all ways of life and conceptions of the good remains the best way to accommodate diversity and protect minorities against discrimination. Chandran Kukathas and William A. Galston are among the recent exponents of such a view:27 despite substantial differences in their arguments, they both reject the necessity of group rights and oppose a revision of liberalism that would grant public recognition to cultural identities. Yet they do acknowledge the magnitude of the challenge of diversity and try to be sensitive to the demands at stake; and it is for this reason that their stance is worth exploring further.

Their central thesis is that justice in multicultural states demands, today more than ever, taking tolerance seriously and maintaining the strong detachment between the public and the private realms characteristic of the liberal tradition. The argument runs roughly as follows. Given the complexity of contemporary conditions of multicultural coexistence and deep pluralism, it becomes crucial that the state does not appear as an entity that takes sides in the clash between majorities and minorities, encouraging or promoting particular cultures or ways of life. The attribution of rights to cultural groups would be a deviation from equal treatment. In this sense, it would not only require, as some advocates maintain, a more subtle understanding of the meaning of liberal principles. Rather, it would involve relinquishing these liberal principles altogether, through undermining the state's position and downplaying the significance of common citizenship.

Within this general line of thinking, Kukathas has developed a distinctive position.28 It is a basic contention of his work that the fundamental value in a liberal society marked by cultural diversity is toleration. Moreover, for Kukathas, the most plausible account of liberalism is rooted in a respect for this value which, in itself, is ultimately embedded in a respect for liberty of conscience: "It is the value of liberty of conscience which lies at the core of the liberal ideal of toleration."29 This is so because the central feature of human nature and conduct, he claims, is an attachment to the demands of conscience.30 Thus, nobody can be forced to act against his or her inner conscience. Toleration, however, does not require appreciation or respect for difference, or the will to engage in dialogue with the other, the dissenter; Kukathas defends a rather undemanding conception of toleration, requiring no more than indifference towards the forms of life or practices that are tolerated.31

These philosophical premises underlie Kukathas' account of a free society as made up of "a collection of individuals (and, so, authorities) associated under laws which recognize the freedom of individuals to associate as, and with whom, they wish."32 This account is one in which freedom of association is the fundamental principle, for it is crucial in allowing the variability of human arrangements and institutions that, in the view of Kukathas, is central to the existence of a free, open, society.33 Moreover, in this view, the state is conceived as an association of associations, as a political agreement that includes them all:

The state is a political settlement which encompasses these diverse associations; but it is not their creator or their shaper. This holds all the more strongly if the state is claimed to be a liberal state. The liberal state does not take as its concern the way of life of its
members but accepts that there is in society a diversity of ends – and of ways in which
people pursue them. It does not make judgements about whether those ways are good or
bad, liberal or illiberal.  

If, conversely, public authorities act as a kind of ultimate authority that determines
what is morally acceptable, then “liberalism is lost.”  

The conclusions that Kukathas draws from all of this are well characterised in the
metaphor of the good political society as a “liberal archipelago,” described as a
society composed of different societies or communities “which is neither the creation
nor the object of control of any single authority.” Authorities in this model “function
under laws which are themselves beyond the reach of any singular power.” In this
regard, it should be emphasised that, in Kukathas’ view, an important feature of a
liberal polity is that it must be able to accommodate multiple authorities, the legit-
imacy of which comes from the acquiescence of their respective subjects. But,
because individuals should not be coerced to act against their conscience, a liberal
society should provide them with the means to resist and repudiate authority. This
can be done, according to Kukathas, simply by allowing them to situate themselves
under an alternative authority or even by establishing a new one—instead of through
state interference in the internal affairs of associations in order to impose certain sub-
stantive standards of justice.  

This important thesis will be taken up in a moment. Before, it is important to
highlight some of the features that make this position a sui generis one within con-
temporary liberalism, to be better able to grasp its particular implications for the
problems that concern us here. It might be useful, to this end, to contrast the argu-
ment sketched with the views on tolerance and state neutrality defended by liberal
philosophers that operate within a Rawlsian framework. By and large, the argument
of Kukathas is at odds with this framework in at least three important ways. First,
Kukathas endorses a conception of the state and of society with fuzzy boundaries,
namely, an open society with a multiplicity of authorities that are regarded as legiti-
mate as long as they are able to obtain the acquiescence of their members. In his view,
a good society is not a unified entity circumscribed by fixed boundaries and, hence,
social unity plays a minor role. In this picture, the state is a “much diminished
entity,” it needs to accept the jurisdictional independence of other authorities and
refrain from establishing and imposing common standards to those who are not
inclined to accept them.  

Secondly, Kukathas defends a kind of political liberalism which, he claims, avoids
appealing to particular moral commitments linked to a comprehensive conception of
justice. The problem is that a comprehensive liberalism cannot succeed in commanding
the acceptance of all, and hence a political order that aims at accommodating diversity
cannot be based on such a conception. That is why the state, in this picture, should
refrain from acting in order to secure some substantive moral conception, for the good
society is not one governed by a shared conception of justice. According to Kukathas, the
principle of liberty of conscience, which is fundamental to toleration, identifies the basis
from which different moral conceptions are allowed to coexist; in his view, it differs from
other theories about how to manage diversity that are built upon the Rawlsian framework
of justice which is rooted in the value of autonomy, thus excluding those who disagree
with this moral standard.
Finally, it is also important to stress that Kukathas is mainly concerned with the question of the legitimacy of authority, rather than with that of justice. This is a major difference with mainstream contemporary political theory, as he himself acknowledges. Kukathas offers different reasons to justify this approach, the main one is that, for him, the main question in political philosophy “is not about justice or rights but about power.” Leaving aside this complex debate, for our present concerns the relevant point to be noted is that, as a result of this position, the theory that Kukathas offers merely seeks to provide the grounds for a transitory “modus vivendi,” and not a “modus credendi,” that secures civility. The only agreement that we can hope for in a free society is not an agreement on substantive moral truths but “an agreement to abide by norms which tolerate disagreement.” People can rightly dissent in their judgements of what is good and we should give up trying to reconcile or dissolve this pluralism.

In a similar vein, Galston calls for an account of liberalism that takes diversity seriously. The commitment to what he dubs “the Diversity State” entails “a strong system of tolerance,” which has as a key component “a cultural disestablishment, parallel to religious disestablishment.” According to this view, the crucial strategy for the historical development of liberalism has been the acceptance of difference through a regime of mutual tolerance. Galston distinguishes between two concepts of liberalism on this ground and claims that, “properly understood, liberalism is about the protection of diversity, not the valorisation of choice,” even if the latter is dominant in contemporary formulations of liberalism.

However, the theoretical premises of Galston differ substantially from those that support Kukathas’ theory, even if both may lead to similar conclusions as to the best political response to demands of culture. On the one hand, Galston affirms the compatibility of state unity and diversity, as well as the need to enforce the basics that sustain a civil order and its constitution, whereas, as mentioned, Kukathas insists on the insignificance of social unity, a perspective that even leads to allow dissident groups to reject the authority of the state. On the other hand, it is the protection of diversity, as the main manifestation of what he calls “expressive liberty,” that lies at the core of Galston’s theory; in contrast, Kukathas explicitly rejects the idea of diversity as a value in itself.

In any event, to support a version of liberalism that is not concerned with the enhancement of autonomy, but gives priority to other values such as freedom of conscience or diversity has important implications for the limits of tolerance. More attention will be drawn to this issue in Chapter VI. For the moment, it is important to note that the intuitive appeal of this line of argument derives from the analogy with religious tolerance and, more precisely, from the idea, already worked out in the eighteenth century, that freedom of religion should be accorded to all individuals in order to prevent discrimination. After all, liberal states partly emerged as a reaction to feudalism and as an answer to religious wars. With the aim of eradicating the repression suffered by certain groups and integrating them into social and political life, the building of modern states progressively swept away particular regimes of rights and special privileges and introduced a system of uniform rights. The democratic trend that followed liberal revolutions incorporated this inclination toward legal homogeneity.
If we agree that the tolerance model, in some of its variants, sets out a strong case for managing diversity, why would liberals wish to drastically modify their theory by adding a component—group rights—that might distort its core values? What we need instead, it could be argued, is to fully exploit the potential of this old strategy. As Prieto Sanchís stresses, equality today requires extending the meaning of laicism beyond the religious sphere, encompassing the cultural realm. Endorsing the same idea, José Antonio Aguilar Rivera complains that the potential of tolerance is generally underestimated in debates about minority rights for the sake of what he sees as a radical revisionism of liberalism. It is regrettable, Aguilar Rivera says, that Locke’s natural heirs have underrated the power of the tolerance approach, whose intrinsic value must be restored.

In short, the argument is that the basic pillars of liberalism offer a foundation on which diverse cultures can be built and coexist and therefore, where individual rights are firmly protected, group rights are unnecessary. To assign the same rights to all citizens—freedom of association, religion, speech and so on—constitutes the best strategy to guarantee, indirectly, the legitimate forms of diversity in a democratic society. In the context of group relationships, the merely negative version of tolerance (“live and let live”) requires the majority to abstain from interfering with the beliefs, world views or lifestyles of minorities. Certain deviations from this standard are sometimes justified, but only in order to grant its full efficacy. Thus, certain group-based measures, such as compensatory policies or affirmative action in relation to education and jobs, are not prima facie ruled out. But the case for these measures tends to be made in contexts where the duty of state neutrality (understood as non-interference) has been previously breached; for example, when a government has been actively involved in practices of oppression of certain groups and the effects of these practices still pervade their relations. However compelling this argument may be, we already saw that there is a crucial difference between granting group rights to cultural minorities on a permanent basis and approving group-based programmes aimed at removing systematic inequalities suffered by their members. In the second case, the ultimate aim is not to challenge the ideal of difference-blindness, which, in this context, means that the state reacts to cultural diversity with “benign neglect” or, in Kukathas terms with a “politics of indifference.”

There are some important connotations in this way of looking at the relation between liberalism and diversity. First of all, an underlying assumption in most formulations of the tolerance approach is that, as with religions, the diverse cultural practices will have an equal opportunity to flourish and prove their capacity to attract supporters in civil society. For this reason, against communitarian critics who regard liberal views as too individualistic, its proponents usually invoke freedom of association as a crucial value, not necessarily subordinated to a higher one, such as autonomy; for this reason, non-state organisations often play a central role in this model.

The scope of this strategy may be limited, however. Above all, it does not guarantee the integrity or survival of minority cultures over time. Only their members’ perseverance in making co-operative efforts to preserve and transmit the meaning of practices, values and traditions to successive generations, together with the capacity of associations to attract new supporters, can ensure this end. The vitality of cultures, and cultural diversity in itself, will therefore depend on the strength of the
associations. Yet, for proponents of this approach (especially those advocating the centrality of choice), this constraint should not be seen as a flaw: just as it is stated that social inequality arising from voluntary transactions between the holders of the same rights is fair, so too is cultural inequality derived from competition in the “cultural market.”

In exercising her basic freedoms, every person must be able to choose the option that she considers most attractive. We may regret that the result of multiple choices made by individuals over time has led to the decay or disappearance of some cultures or ways of life. But to the extent that this consequence results from individual preferences, it cannot be seen as unfair.

Still, the principle of tolerance seems to leave ample room for a broad accommodation of the claims of cultural minorities, especially if we adhere to a version of liberalism that prioritises the values of liberty of conscience and diversity. As explained, in this account, the concern is with the most extensive accommodation of diverse values, and, therefore, its exponents are inclined to admit that a case can be made for illiberal groups that uphold values that conflict with the cultivation of autonomy. Thus, assuming that, to a certain extent, the likelihood of intra-group injustice is unavoidable in a model of a free society where no associations or particular moralities are privileged from a political point of view, neither Galston nor Kukathas are particularly troubled by the fact that the internal structure of groups may reflect illiberal values. On the contrary, they argue that, if they are to be consistent with their own principles, liberals must accept this potential outcome. In principle, the assumption is that non-liberal ways of life should enjoy the same rights and chances of surviving.

Note that, to a more limited extent, this perspective could also be seen as compatible with autonomy-based conceptions of freedom provided that we accept the argument that the state’s intrusive attitude into illiberal ways of life would breach the premise that the individual is the author of her own life.

Put another way, a meaningful exercise of autonomy can lead to loss of freedom. Thus, some people voluntarily accept membership in associations or communities that incorporate internal rules that restrict the exercise of freedom (for instance, life in a monastery often implies severe codes of conduct; or, in general, belonging to a church carries severe restrictions on the choice of forms of marriage, education of children, etc.). In this case, we might say that it is not the duty of the state to prevent people from adopting an illiberal way of life. The idea of non-interference in the internal organisation of religious orders is justified by a respect for the consent or submission of their adherents, unless it could be proved—as has been the case with some religious sects—that their methods of recruitment involve forms of coercion.

In general, proponents of the tolerance approach accept that the Millian constraint on liberty, harm to others, would presumably be satisfied by ensuring the right to exit the group, which plays a central role in this theory. Thus, Kukathas emphasises the significance of freedom of association to accommodate diversity but, at the same time, he claims that the corollary of this principle is freedom to dissociate from the group. Although, in his opinion, the more the different associations that compose the society tolerate difference and dissent, the more they can be called “liberal” associations, Kukathas is convinced that his archipelago can still count as a liberal one even if the associations that compose it are internally illiberal. For this to be so, the
only necessary condition is that individuals enjoy the right to leave the group, which also includes the possibility of dissidents to join some other association or to create a new one, so nobody is obliged to remain in associations in which they are not tolerated and live according to terms that are at odds with their conscience.\textsuperscript{70}

Therefore, while the state has no duty to enhance a substantive conception of autonomy within associations, it must guarantee that dissident members have the chance to leave the group. This solution seems to reconcile diversity—including illiberal ways of life—with liberty, as long as the freedom of exiting is publicly safeguarded. Certainly, there are thinner and thicker conceptions, as it were, of the right to exit. In particular, Kukathas understanding of it is, in my view, extremely thin, for the idea that people are free to leave is not accompanied by measures to diminish the costs and risks of exit that, according to him, should be borne by those who exercise this right.\textsuperscript{71} But there are other, more robust, understandings of this right. Thus Galston argues that “exit rights must be more than formal,”\textsuperscript{72} acknowledging the problem of internal coercion (including parental despotism) as well as the transitional difficulties in trying to integrate into the mainstream society, Galston theory is more open to allow state protections to secure this right, since a liberal pluralist order must defend its core principles.\textsuperscript{73}

I shall go back to these different conceptions of exit rights later in this chapter. For now, it is important to note that, even if its formulation varies substantially, the right to exit is seen as sufficient to mitigate the eventual possibility that certain cultural groups become “islands of tyranny in a sea of indifference.”\textsuperscript{74}

To summarise, proponents of some form of the tolerance approach commonly agree in that affording group rights to cultural minorities would imply putting some central liberal values at risk. This argument connects the ideas of tolerance and neutrality with a certain picture of the liberal state: a state that refrains from acting towards enhancing or promoting a particular culture or cultures. The revival of this approach thus emerges as a formula for respecting difference without invoking group rights or any other form of public recognition of diversity. In this sense, it rejects the claim that liberal theory is incapable of dealing with the conflicts arising from multiculturalism. Moreover, some of its advocates even insist that this approach has the merit of respecting cultural diversity to a greater degree than arguments for group rights which, like that of Kymlicka, rely on a thick conception of autonomy.\textsuperscript{75} Since everyone is free to participate in the creation and recreation of their identity and traditions, the diverse cultural groups can subsist if they are able to transmit their values to future generations. Culture and politics—like religion and politics—must be kept separate.

3. THE CULTURAL DIMENSION OF POLITICS: LIBERALISM, NEUTRALITY AND NATION-BUILDING

It is widely held that civic nationalism can be distinguished from ethnic nationalism precisely by its emphasis on the tolerance approach. In contrast to ethnic nations, civic nations are neutral concerning their citizens’ ethnocultural identities, defining national belonging only in terms of adherence to democratic principles and values.\textsuperscript{76} Both culture and religion are relegated to the private realm, where everyone is free to
pursue her own faith, traditions or ways of life, and constitutional agreements and legal rules are conceived as beyond the pre-political ethnos. Thus, while civic nations show an inclusive vocation, ethnic nations tend to exclude those who do not share the dominant culture or belong to the prevalent ethnic group. The Habermasian notion of constitutional patriotism might be particularly apt in accounting for the civic version of nationalism.

This taxonomy is frequently used to account for the tensions involving ethnocultural groups in Central and Eastern Europe since the fall of the Berlin Wall and the collapse of communist regimes. Even though the transition to democracy was initially contemplated with optimism, post-communist Europe has proved to be a fertile soil for the upsurge of nationalism, especially of minority nationalism. Contrary to some widespread expectations, far from diminishing the relevance of group identities the newly established democracies are faced with an increasing visibility and public assertiveness of identity groups that seemed to have faded away under the communist regimes. Current cultural disputes tend to focus on how membership of an ethnonational group should affect the political articulation and distribution of powers in the newly created states. For democratisation and economic development have not helped to “liberate” individuals from fixed identities, as many predicted.

In analysing this situation, it is not uncommon to conclude that, unless those particular loyalties and identities are abandoned in favour of a wider, more encompassing, civic identity, the prospects for progress in the region will vanish. Furthermore, it is usually stressed that both the politics of identity and the language of nationalism are likely to result in the “balkanisation” of society and perhaps cause civil war in multinational and multiethnic states such as Ukraine, Albania or Romania. Along the lines of the tolerance approach, these countries should presumably struggle to dismantle all anachronistic connections of existing identities with public institutions so as to prevent this backlash. Typically, the assumption behind this judgement is that the political achievements in the West are based on the success of state neutrality, which entails an inclusive model of polity building that is not perceived as culturally or ethnically biased.

However, a rigid distinction between civic and ethnic nationalism requires an ahistorical account of liberalism and democracy. For it is not true that the incidence of ethnocultural factors has been rare in the building of Western democracies. Far from being relegated to a secondary role, these characteristics have played, and continue to play, a central role in the political praxis. Liberal states, therefore, have not adopted the kind of “hands-off” approach to culture and identity that the model of tolerance recommends.

This observation points to a crucial weakness of this approach—a weakness that has been stressed and illuminated by contemporary legal and political theorists such as Kymlicka, Margalit, Miller, Raz, Tamir and Taylor, among others. Their works—which, borrowing Kymlicka’s term, I will refer to as “liberal culturalism”—have yielded genuine insights into the centrality of a number of factors generally downplayed by the dominant approach to cultural diversity in liberal theory. In particular, these scholars claim that, despite dominant interpretations and myths, all liberal states have been historically involved in projects of nation-building mostly aimed at promoting the dissemination and hegemony of a single culture—generally the majority
culture. The liberal tradition, in contrast, has tended to neglect this feature, which points to important shortcomings in some of its central premises. Examples of these shortcomings are the implicit assumption that states are nation-states with a homogeneous culture and a common language; the idea that the principles of justice that govern international relations differ from those that should inform state policies; the premise that citizenship in liberal states is not a matter of choice; the notion that the social state primarily distributes the available resources amongst its own citizens or the belief that it is legitimate for a constitution to establish differences in treatment between nationals and foreigners.\textsuperscript{82} As Tamir writes, all this strengthens the idea of the modern liberal democratic state as something other than a contingent association connected by a formal contract whereby the citizens can freely join or leave the union. On the contrary, most people have deep links with their countries and both law and politics are instrumentally important to consecrate their legitimacy.\textsuperscript{83}

Liberal culturalists criticise the failure of traditional doctrines of liberalism to explore in depth the nature of these links. In particular, they argue that key questions such as the normative legitimation of different self-governing states and the role of nationalism in this process have been marginalised. Emphasising the need to deal with these issues, which have remained on the “hidden agenda” of liberalism, in Tamir’s expression,\textsuperscript{84} this strand of thought aims to show that the relationships between liberalism and nationalism are far more intricate than is commonly recognised. A central thesis, in this respect, is that the pretended cultural essence of states has been key in delimiting and defending the legitimacy of political borders. Keen to avoid the questioning of their sovereignty over a territory, both liberal and non-liberal states have sought to be identified as nations through the diffusion of a single language and culture, that is, of a particular “societal culture.”\textsuperscript{85} According to Tamir, the need of a public space that will enable the reproduction of the cultural aspects of a certain national lifestyle thereby constitutes the essence of the right to self-determination.\textsuperscript{86} Thus, the widespread claim that nationalism and liberal democracy are incompatible simply neglects the original link between them. Emphasising the relevance of this connection, liberal culturalism criticises the neglect of the problem of the \textit{demos} in dominant theories of justice and democracy and allows questioning the coherence of the tolerance approach. In the following, I will examine some of the central arguments of this critique.

3.1. “\textit{E Pluribus Unum:}” The Historical Link between Nationalism and Liberalism

Liberal culturalism insists that, in the past, ideas of nation and nationalism were bound to the consciousness of the value of self-government.\textsuperscript{87} Supporters of the French and American revolutions linked the concept of “people” to that of “nation.” Because republicans insisted that all political power originates from the people, it was necessary to delimit the elements that form the relevant focus of collective self-identification. No one suggested that a random set of individuals coincidentally living side by side could aspire to self-government. As Ernest Gellner explains, the notion of nationhood satisfied the need for a deeper group identification and mutual recognition, which over time would eventually replace the loyalty to local and religious communities as a focus of mutual recognition.\textsuperscript{88} The existence of an empirical substratum
(a common origin, language, history) before the state was invoked when liberals began to question the legitimacy of the dominant political structures in the ancien régime. Thus, in France, Abbot Sieyès, in his celebrated pamphlet Qu’est-ce que le Tiers État, wrote:

La nation existe avant tout, elle est l’origine de tout. Sa volonté est toujours légale, elle est la loi elle-même (…). Il serait ridicule de supposer la nation liée elle-même par les formalités ou par la constitution auxquelles elle a assujetti ses mandataires. S’il lui avait fallu attendre, pour devenir une nation, une manière d’être positive, elle n’aurait jamais été. La nation se forme par le seul droit naturel.89

Similarly, when John Jay approached in The Federalist Papers the critical issue of whether it was more convenient to build in America a single nation under a federal government or to divide the State into different confederations or sovereignties, he appealed to the natural, cultural and historical bonds which united all Americans on the same territory as grounds to support the first option:

Providence has been pleased to give this one connected country to one united people – a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs. (…) This country and this people seem to have been made for each other.90

Thus, the founding fathers of America saw themselves as belonging to a nation and resorted to this idea to justify the struggle for an independent government. This new form of shared belonging provided the platform from which to demand a radical change in the source of legitimacy of political institutions. Individuals progressively acquired the conviction that they were citizens of a single political community. As Habermas argues, the ideas of nation and national consciousness provided a bedrock for cultural integration and the emergence of the constitutional state; in his view, “national consciousness is a specifically modern manifestation of cultural integration.”92

Nationalism can thus be seen as a genuinely modern idea. This, however, does not mean that a radically new way of thinking emerged. In fact, different studies on nationalism show that its constitutive elements are present in pre-modern cultures. For instance, already in ancient Greece and Rome, there was a distinction between compatriots and foreigners, and the idea that each people belong to a territory would occasionally be invoked in the arena of politics. Nevertheless, it is generally acknowledged that, strictly speaking, “national consciousness” cannot be traced back to that period.93 Nor can it be traced to the Middle Ages, when individuals saw themselves as primarily linked to a province, region or city without wider subjective links, except for religious ones. For this reason, most scholars of nationalism place the emergence of national consciousness in the eighteenth century.94

Gellner has developed an interesting functional account to explain this shift. Nationalism, in his view, is not the result of emotional excess or ideological aberration; rather, it is firmly rooted in the different structural demands of modern industrial society. Nationalism constitutes an external sign, as it were, of a deeper transformation in the relations between government and culture that were actually required by the process of industrialisation.95 Gellner reaches this conclusion after an exhaustive
analysis of the evolution of agricultural societies towards industrialism. Very succinctly, the argument goes as follows:

The stability of the structure of social operations in agricultural and pre-industrial societies is incompatible with that of a modern industrialised society. In the latter, changes are of a radical and continuous nature, which requires occupational mobility from individuals. The division of labour and the evolution of technology both call for a rapid adjustment to changes and the development of some common skills. For this reason, the basic educational training promoted in an industrialised society tends to be generic and not directly linked to a particular professional activity as in an agricultural society. While the industrialised society is a society of skilled workers, the division between them is not so wide. People develop the type of general abilities that are needed to carry out other professional activities. Education, therefore, becomes a fundamental element in these societies; yet, it needs to be standardised and can thus not be provided by local units or the family, only “by something resembling a modern ‘national’ educational system.” For this reason, Gellner thinks that the shift to industrialism was linked to be the era of nationalism, a period of readjustment where the political borders would tend to coincide with the cultural ones. In his view, it is not so much the fact that nationalism imposes homogeneity, but that nationalism reflects the objective need for homogeneity. He recalls that feudalism in agricultural societies was not overly concerned with cultural and religious diversity as long as the taxes were paid. In contrast, the viability of a modern industrial state requires a highly standardised and centralised culture. To achieve this, education must become a central function of the state, instead of remaining in private hands. This, Gellner argues, is a precondition for the dissemination of a nearly official culture which, eventually, will be seen as a natural trustee of political legitimacy. It is only under these circumstances that—he claims—any challenge made to the territorial borders of political units that are seen as nations constitutes an outrage.

This approach to nationalism helps to clarify why the building of modern states could not ignore culture. It also explains the need for a certain degree of cultural homogeneity without resorting to emotional or natural sources as the main roots of nationalism. Certainly, although nationalism worked as a catalyst in the liberal revolutions, the effective penetration of the national consciousness into the system of individual values did not take place overnight. Likewise, the term “nation” did not arise in the period of liberal revolutions either. A more lengthy analysis would be needed to capture the complex transformations that the meaning of this term has undergone throughout history, and this is a matter I shall not pursue here. In any event, it is not so much the invention of a new word that is noteworthy, but the transformation of its meaning to encompass a political principle. What was new, in Miller’s words, “was the belief that nations could be regarded as active political agents, the bearers of the ultimate powers of sovereignty.” When the universal democratic ideals blended with this emerging national ideology the seed was sown for the political order that revolutionary liberals envisaged. But, at the same time, the conceptual distinction between nation and state became progressively blurred, and this eventually influenced both post-revolutionary political habits and modern political thought.
As usually noted, a visible outcome of the historical link between nationalism and liberalism is the way in which the terms “nation” and “state” are often used synonymously. This practice has persisted until the present day, despite the distinction made in dictionaries and the awareness of many of their differing connotations. Thus, we speak of “nationality” in relation to belonging to a state, or of “international law” and of the “United Nations” with reference to institutions and organisations created by states. In the light of the historical connection between nationalism and liberalism, this terminological slackness should not raise any perplexity. Liberal revolutionaries understood that nations were the natural candidates for political self-government. The state was simply seen as the institutional representation of the will of a people. Hence, nationality acquired a distinctly ideological connotation. Although sovereignty over a territory is a key element which distinguishes the state from other human associations (in addition, of course, to its particular objectives and the means used to achieve them, in the classical definition of Max Weber), it was inferred that its members were united by ethnocultural ties—a “brotherhood,” in the expressive word used by Jay in the quotation above. Consequently, the legitimacy of the state came to be derived from its function of offering institutional support to the nation, which symbolised the loyalty, solidarity and fraternity among all the citizens of a political unit.

In sum, the wide acceptance that “sovereignty resides essentially in the nation”—as Article 3 of the French Déclaration des Droits de l’Homme et du Citoyen proclaimed—brought about a new political discourse that promoted equivalence between the “nation” and the “people belonging to a state,” and between “nationalism” and “patriotism.” This evolution, which was to radically change the structures of power that had previously existed, turned into what Habermas refers to as a double face of the notion of citizenship: the status of citizen amounts to recognising a previous, pre-political membership in the nation while, at the same time, it is a legal position defined by civil rights. As regards territorial borders, their importance would continue to grow as the state’s activity affected the ordinary life of its citizens. As a result, the nation-state was consolidated as the main political entity. Of course, the link between nationalism and popular sovereignty did not initially mean that “the people” should directly rule. Democracy and citizens’ rights would only be gained after a long struggle against the privileges of the upper social classes—a struggle that is not yet over.

3.2. The Politics of Nation-Building

As pointed out, the effective permeation of a “national consciousness” into the system of individual beliefs and values took time to happen. But what were the defining elements of the entity which, according to liberals, was destined to be the primary subject of political legitimacy? Albeit, etymologically, the term “nation” related to common origins, ethnocultural relations and affinity, as well as territorial integration, the transformation of nationality into a political principle led to the progressive loss of relevance of those objective characteristics in favour of subjective beliefs. Nations existed, as it were, when its members mutually recognised themselves as compatriots. While a common history, language, religion, ethnicity or territory were potentially...
significant elements, none of them was indispensable. As Benedict Anderson famously put it, nations are “imagined communities.”104 According to Miller (whose concept of nation brings together the main elements identified by other leading theorists of nationalism), a nation is a historical community constituted by shared beliefs and mutual commitment among its members, connected to a particular territory and distinguished from other communities by a distinct public culture. Yet the crux of the matter, Miller says, has to be placed in the subjective notion of belief.105 Similarly, Connor claims that what is essential in assessing whether a given group of individuals constitutes a “nation” “is not what it is but what people believe is.”106 Likewise, for Tamir, the crucial factor is the existence of a “national conscience.”107

However, the return of nationalism to contemporary political theory does not consist of recuperating the ethnocentric concept of nation, but of assessing the civic version associated with the figure of Ernest Renan. Renan also stressed the relevance of subjective factors, showing that it was possible to find counterexamples for each of the objective criteria that were normally used to prove the existence of a nation (race, language, religion, community of interests, geography and so forth).108 He then concluded that a nation is a soul, an spiritual principle (“une âme, un principe spirituel”)109 shaped by a legacy of historical memories together with a present desire of continuing shared lives. Its nature is still intangible; one that is based upon the psychological ties which at the same time unite a people and differentiate it, according to the conviction of its members, from the rest of humankind. And since the most tangible element in this elusive picture is the consent of the present members, Renan famously formulated that a nation is “un plébiscite de tous les jours.”110

In contrast to this view, the picture that the revolutionary liberals sought to project was mainly focussed upon objective connotations that lacked empirical support. Complex and multifaceted realities were obliterated for the sake of the artificial, and often coercive, recreation of the desired social unity. Thus, it is patently false that genuine ethnocultural homogeneity existed in America or France at the time of the liberal revolutions, as Jay, Hamilton or Sieyès tried to assert (they could only do so by ignoring a massive part of the population, such as blacks, indigenous peoples, linguistic minorities and so on). Nor is it true that territorial borders coincided with the existing cultural groups. As Kymlicka and others explain, in the case of the United States, the English settlers and their descendants constituted less than half of the population at the time of the revolution; and they were certainly not spread over the geographical territory of the present-day United States. While they were indeed dominant in the first thirteen colonies that formed the federation, a decision was made not to accept any other territory as a state unless non-Anglo-Saxon groups were outnumbered.111 This goal was usually accomplished through drastic means, such as redrawing the political borders of the territory or enacting highly coercive policies of assimilation. For instance, following the occupation of Puerto Rico in 1898, forms of cultural suppression were undertaken by the new American authorities. English came to be, de facto, the official language of the island, to the extent that it was the only language used by the military and civil administration. Although a law recognising the co-official status of both Spanish and English was passed in 1902, rapid assimilation was a central goal for the colonial administration for a long time.112 Needless to say, these measures placed serious limitations on the status and rights of citizens who did not speak English.
Similar policies were adopted to incorporate new conquered regions into the Union. In relation to indigenous peoples, the means of cultural assimilation were too often extremely coercive and brutal. The frustration arising from the resistance and slow pace of assimilation led the authorities to take further measures “to civilise” the perceived enemy. The Indian Peace Commission, created in 1868, concluded that the best way was to accelerate the process of linguistic assimilation on the basis that, through language, customs and thoughts would be similarly moulded.

Given the successive waves of migration to North America over the centuries, it would be obviously incongruous to define the current national groups in the United States or Canada on the basis of race or common descent. For this reason, contemporary defenders of liberal nationalism emphasise that the nation cannot be defined in these terms. In fact, empirical realities were never seen by the state as an impediment in the process of enhancing the unity of traditions, languages and cultures and in adopting assimilationist policies. E pluribus unum was the motto. Despite the different models of integration adopted by France and the United States, which function at the rhetorical level, the political practice shows that the goals of the “melting-pot” were not as opposed to those of the republican model as it is commonly assumed. In contrast to the dominant version of the spontaneous mixing of all cultures, “the ‘pot’ into which everybody has been supposed to melt is white, Anglo-Saxon, protestant, male.”

Ethnos and demos have thus never been radically separated, not even in countries such as France or the United States, where this division is part of the official history.

As for the geographical and social circumstances before the emergence of the nation-states in Europe, the conclusion would be similar. Any rigorous historical investigation into the formation of the European nations during the nineteenth century would surely show that, as in North America, pre-existing ethnocultural diversity was deliberately ignored in favour of different policies of nation-building aimed at fostering an essentialist form of the national identity; hence, national consciousness was, for the most part, based on myths and arbitrary conventions. Probably the French model of republicanism has been more influential in Europe, especially if we contrast it with the ethnic model of the German Kulturnation. Nevertheless, even here the official discourses masked the ambivalence between the proclamation of universalism and a concept of national belonging that, in reality, involved a rather chauvinistic idea of what it meant to be French. Undoubtedly, the drafters of the Déclaration des Droits de l’Homme et du Citoyen must have known that “the people” from which they derived political legitimacy comprised not only the French, but also the Alsatians, Basques, Bretons, Catalans and Occitants. In fact, at the time of the Revolution, the French language was used by a rather small proportion of the individuals that were about to be incorporated into la nation. As Eugen Weber notes, the Jacobin logic led to the official imposition of a certain model of “civilisation” that predominated over the cultures of the different regions and colonies.

A brief précis of the voluntary component in the linguistic factor itself might be illuminating. It is normally observed that, in general, it is not possible to speak accurately of choosing an official language until well into the nineteenth century. In previous centuries, as Latin began to decline, the successive establishment of the
different vernacular languages in Europe was a slow and gradual process that took place more or less unconsciously. This was certainly not a product of self-conscious language policies, such as those pursued later. It was official nationalism that shaped the conviction that languages were something like the property and instrument of identity of specific groups, which were somehow bound to hold a singular position, and a crucial authority, in the political arrangements. As Stephen May explains, “the requirement of speaking a common language is unique to nation-states and a relatively recent historical phenomenon,” so the establishment of national languages was an artificial process “driven by the politics of state-making.” Thus, the emergence of the nation-state was characterised by both a lexicographic revolution and the implementation of a system of public education that, as Gellner explains, performed the function of including all citizens into a homogenised nation. Civic education then masked what, in fact, was a national education. The liberal revolutionaries thought that a basic purpose of public education in one official language was to create a sense of patriotism and dedication to the nation.

Subsequent European history can be viewed in the light of the spread of the revolutionary dogma that “sovereignty essentially resides in the nation.” National sentiments were invoked in order to carry out the struggle for the unification of peoples divided under the imperial domains, as in the case of Germany and Italy, and the independence of others, such as Greece, Hungary, Cyprus or Malta. The new states were created in the image of the old ones and, like them, tried to impose a certain reading of their own history, traditions and customs, and to foster the myth of a glorious past and the illusion of a collective destiny. Not only was the diffusion of a single language and culture crucial to achieving this goal, but a certain degree of collective amnesia was also necessary. Forgetfulness, Renan also wrote, is essential in the creation of a nation: it is necessary that all citizens share some things in common and have forgotten many others. He argued, as an example, that every French citizen should forget episodes such as the Massacre of St. Bartholomew’s Eve. Anderson draws attention to the expression used by Renan (dort avoir oublié) denoting a deliberate absent-mindedness rather than a spontaneous one. For while it was certainly unnecessary to narrate to the public what had happened on St. Bartholomew’s Eve, it was assumed that these incidents of fratricide could not be featured as essential elements of the national identity. Hence, Anderson points out that “having to ‘have already forgotten’ tragedies of which one needs unceasingly to be ‘reminded’ turns out to be a characteristic device in the later construction of national genealogies.”

This apparent paradox in Renan’s argument illuminates vividly the state’s systematic campaigns to construct a particular collective biography. Of course, this process is not peculiarly French: it has taken place along similar lines in all states. Thus, for example, a public educational system works day after day to teach young Spaniards to remember—and forget at the same time—the civil war. If, in general, the citizenry in Spain knows little of its Muslim and Jewish past, despite the dominating influence of these cultures over hundreds of years, it is because the Muslims were defeated in the “Reconquista” and the Jews were definitively expelled in 1492. According to the official myth, after this period, “there were no Jews in Spain” and,
henceforth, the popular tradition in Spain highlights myths and legends of heroes that symbolise the crucial role of Catholicism in Spanish national identity.\textsuperscript{127}

In sum, despite existing diversity, all states have tried to promote the identification of its citizens with a single official language and culture, often through extremely coercive means. The following passage of Tamir’s \textit{Liberal Nationalism} captures the essence of the discussion so far:

\begin{quote}
The concern with the deliberate creation of a nation is guided by a certain idea of what a nation is supposed to be. The inherent contradiction between the claim that nations are natural communities shaped by history and fate and the concept of nation-building is immediately apparent. In order to mask this tension, nation-builders compulsively search for ‘ancestral origins’ to which the new nation might ‘return’, cling to even the faintest testimony of historical continuity, and advance patently false claims locating the nation’s roots in a distant past.\textsuperscript{128}
\end{quote}

\subsection{3.3 The Liberal Justification of Nationalism}

It could be argued that, even if the common official versions of the history of the distinct nation-states are biased, there are solid reasons to recreate the past so that the illusion of unity prevails over divergence, to accentuate the positive episodes, relegating into collective amnesia the shameful ones. In the recent history of Spain, for instance, it is possible that the suspension of the memory of a civil war and of forty years of dictatorship was indispensable in order to begin the democratic path with some assurance. In France, once World War II was over, De Gaulle restored the nation through the myth of the resistance. In some way, the Vichy period became a component of the unmentionable. Everybody had been part of the resistance; nobody had collaborated with the Nazis, nor had wanted Jews in French territory to be deported to Auschwitz. In her novel, \textit{Memoires d’Hadrien}, Marguerite Yourcenar makes Emperor Hadrian express the following in relation to his origins:

\begin{quote}
La fiction officielle veut qu’un empereur romain naissie à Rome, mais c’est à Italica que je suis né; (…). La fiction a du bon: elle prouve que les décisions de l’esprit et de la volonté priment les circonstances.\textsuperscript{129}
\end{quote}

\begin{quote}
Insofar as there is truth in the claim that fictions have a positive side, it would be premature to reject nationalism merely on the grounds that the processes of nation-building are incapable of resisting rational scrutiny. This idea, it seems to me, underlies the views of many contemporary defenders of liberal nationalism who argue that attempts to foster a sense of unity through nation-building policies were mainly driven by the interest of fostering other values, including democratic ones. According to this theory, two widely held convictions played a major role: the idea that a free government is only viable under conditions of cultural homogeneity; and the view that, where a choice has to be made, free individuals would prefer to live in their own cultural communities. In relation to the first statement, many liberals accepted, more or less explicitly, that two or more different cultural groups could not coexist within a single polity. As Hannah Arendt writes, “the breakdown of the feudal order had given rise to the new revolutionary concept of equality, according to which a ‘nation within the nation’ could no longer be tolerated.”\textsuperscript{130} On the one hand, political self-expression
was seen as a key concomitant of cultural self-consciousness. On the other, the nation-state was regarded as the best political structure to support democracy and prevent despotism by the majority. In his *Considerations on Representative Government*, Mill approached the problem of the relationship between freedom and nationality, maintaining that an essential condition of free institutions is that the borders of the state coincide with those of nationality:

> Where the sentiment of nationality exists in any force, there is a prima facie case for uniting all the members of the nationality under the same government (…). Free institutions are next to impossible in a country made up of different nationalities. Among a people without a fellow-feeling, especially if they read and speak different languages, the united public opinion, necessary to the working of representative government, cannot exist.\(^{131}\)

Mill argued that antipathy and rivalry between nationalities would create distrust towards the government. He was also concerned that, in a multinational state, the army could not perform its function effectively, since soldiers who consider part of the population as foreigners would have no scruples in fighting against them, as if they were the enemy.\(^{132}\)

Therefore, on this account, nation-states are preferable because they provide a stronger bedrock for freedom. The reappraisal of this line of thought, and its importance within the liberal tradition, is among the main merits of liberal culturalism. Mill’s argument cannot be considered as merely anecdotal. On the contrary, as Kymlicka explains in detail, other liberal philosophers during the nineteenth century and the first part of the twentieth century shared this perspective.\(^{133}\) Hence, even with all its misconceptions and prejudices, the tendency in the liberal tradition has not been to relegate the cultural question to the private realm. Quite the opposite: the alleged need of cultural homogeneity was invoked to justify policies of assimilation of cultural minorities into the dominant national culture. Leaving aside the degree of coercion used to achieve this end (which hardly anyone would nowadays justify) commentators emphasise that the centrality acquired by the nation-state fulfilled a central function in the consolidation of democracy and progress in terms of social justice that should not be overlooked.

Indeed, Miller, Habermas and Taylor coincide in stressing that the nation-state made possible a new, more abstract, form of social integration, which became the foundation for a secularised model of political legitimacy.\(^{134}\) Nationality provided a wider focus of modern self-identification for emancipated subjects, replacing feudal corporative links with ties of solidarity. Some repercussions of this transformation were positive. Above all, Miller writes, invented or not, “the historic national community is a community of obligation.”\(^{135}\) The identification with a nation facilitated the expansion of the boundaries within which individuals acknowledge special obligations towards other human beings. People came to perceive themselves as part of a long-term cooperation scheme that extended beyond their family, clan or region to include strangers—as long as they shared the same nationality. In this way, nationalism had the virtue of transforming the self-perception of individuals, linking essential aspects of freedom and personal well-being to the existence and prosperity of a national community.\(^{136}\)

Nationalism also helped to advance modernisation and equality of opportunities. Recall that, in Gellner’s view, mass literacy was a requisite for industrialisation, which
depended upon the availability of a labour force endowed with the level of technical training that only a general and standardised education could provide. Whatever the reasons were for adopting it, inclusive systems of public education contributed to lessening inequalities and made people more aware of their position in society and of their rights.

Other positive effects of the emergence of nationalism have been noted. As Tamir argues, however uncomfortable it might be for intellectuals to account for the importance of emotions in the reasons for action (not the irrational but the non-rational, as Connor rightly specifies\textsuperscript{137}), their influence is crucial to making sense of some common practices in all states. Referring, in particular, to the role that the commemoration and worship of the dead plays in political life, she stresses that the willingness to risk one’s own life for the state in moments of crisis conflicts with the powerful human interest in survival. In Tamir’s view, this conflict can only be resolved by portraying the political community as a national community in which there are deep bonds that lead individuals to accept such demanding duties.\textsuperscript{138} Recourse to the idea of an ancestral community that must be loved and deserves to be preserved, may be the only way of lessening people’s natural fear of death.\textsuperscript{139} Liberal morality, however, lacks a coherent account for situations in which individuals are ready to sacrifice basic goods. But Tamir claims that nationalism should be seen not as “the pathology infecting modern liberal states but as an answer to their legitimate needs of self-defence.”\textsuperscript{140}

The problem of individual self-sacrifice in extreme circumstances invites further elucidation. Take, for instance, democratic participation. Waldron has argued that each citizen has a duty of civic participation, which consists largely of the duty of ensuring that people “come to terms with one another, and set up, maintain, and operate the legal frameworks that are necessary to secure peace, resolve conflicts, do justice, avoid great harms, and provide the basis for improving the conditions of life.”\textsuperscript{141} Moreover, in relation to the extent of the demands involved, Waldron insists that this is not merely “a duty to do x,” but a duty to do it responsibly. Participation, he argues, must be undertaken in such a way that it pays attention to the interests, needs and opinions of others and must not diminish, as a result, existing prospects of agreement and peace.\textsuperscript{142}

This far we may agree with the argument. But what makes Waldron think that, as a matter of fact, individuals are willing to fulfil this duty of responsible participation? Put differently, what are the incentives for people in today’s democracies to commit themselves to their fellow citizens and take their interests and opinions seriously? Liberal nationalists answer that some form of close attachment and feeling of belonging such as that provided by national sentiments is the precondition for exercising those duties. Similarly, the practicability of the deliberative aspects of democracy requires that participants in the public debate understand each other and this, in turn, requires a common language. Reflecting on this issue, Kymlicka and Straehle argue that national democratic forums normally ensure a more inclusive framework for participation and deliberation than international forums, as only a few people—usually elites—are sufficiently fluent in a second or third language.\textsuperscript{143} Moreover, for Kymlicka, “democratic politics is politics in the vernacular.”\textsuperscript{144}
As regards social justice, it is also affirmed that the establishment and preservation of a welfare state requires a high degree of trust and solidarity among citizens: the broad co-operation necessary to implement social schemes depends very much upon them. Trust, as Annette Baier argues, implies granting another person discretion to affect our interests, which opens the risk of abuses from the recipient of the conferred power and, therefore, situate us in a position of special vulnerability. That is why, generally speaking, we tend to trust our family or friends more than we trust strangers. Likewise, it could be argued that, at the collective level, trust tends to be guaranteed through ideas of national belonging. These are often essential for the fulfillment of many of the duties involved in welfare states, provided that most people make sacrifices on the basis of the expectation that others will act reciprocally in the future—for example, paying taxes to preserve a social security system.

Based on these considerations, Miller argues that, in the modern world, democratic welfare states depend upon the kind of political unity created by a national identity. Tamir also explains that, in the welfare state, the need to justify shared responsibilities and to create the necessary support for redistribution seems to require a community that shares “an ethos of a common past and a collective future.” Civic commitment, as a precondition to sharing goods and to committing to political life, is more likely to appear in cohesive societies where social relationships are built upon trust. So far, nationality has been a key element in extending the circle of solidarity to more abstract levels, thereby providing the basis for the specific types of relationships needed to preserve certain cherished values, democracy and social justice among them. This is the reason why nationality is often seen as the organising and mobilising principle of the modern state over the last two centuries. This reasoning can help to provide an understandable explanation for the centrality of nationalism even in an age of globalisation, as well as to account for some of the difficulties faced by proposals to supersede the national framework in an effort to expand social justice and eradicate huge problems such as hunger and malnutrition.

To the extent that the study of the nature of the relationship between nationalism and liberalism could bring a better understanding of these patterns, its relevance has been seriously underestimated in post-war political theory. Liberal nationalists attempt to remedy this shortcoming. For them, liberalism and nationalism are not only historically linked, but also more capable of being harmonised, against the common perception. Sharing a national identity, they claim, is relevant to the process of making some fundamental liberal values—such as equality and freedom—effective. Unfortunately, it is the xenophobic or violent face of nationalism that is often publicly revealed, making the headline news around the world. However, nationalism need not be driven by such inherently debased or anti-liberal forces.

The stance set out above does not amount to a blind defence of nationalism; instead, it is possible to distinguish between more and less defensible versions of this phenomenon (in the same way that there exist defensible and indefensible versions of any other ideology). Although the virulence of some ethnic conflicts highlights the most negative aspects of nationalism, it should be recalled, as Anderson stresses, that nationality has also been able to generate love and sacrifice, providing the social ground in which both ethical and cultural values and goods relevant to democrats may take root.
To recap, as the recent literature on liberal nationalism shows, culture and identity have been key elements in the construction of liberal democracies and in the works of major liberal thinkers. Ethnocultural factors have played a central role in the political praxis and, in general, liberal states have not adopted the “hands-off” attitude to culture and identity that underlies the tolerance approach.

3.4. The Awakening of Minorities

The formation of democratic states has been historically linked to the ideal of nationality, which was identified with a common cultural substratum; as explained above, where cultural homogeneity did not exist, it was actively fostered through a standardised education, public symbols and also different degrees of public coercion. Official nation-building programmes were mostly designed to assimilate cultural minorities, either territorially concentrated or not. To be sure, the options most commonly envisioned were either assimilation or the redrawing of borders, rather than the recognition of any type of special status for these groups. This appears as a natural derivation of the previous reasoning and, faced with the dilemma, most states tried to foster unity through encouraging a common national consciousness, since the rearrangement of borders was not always feasible or wanted. This required, in practice, some tangible elements. The greater the cultural diversity, the greater was the perseverance in propagating a picture of homogenous history and culture (in order to establish the “existence” of the nation). The goal was to generate among citizens a feeling of self-identification with certain public emblems and to foster a common vernacular language.

Mill himself was aware of the fact that perfect congruency between state and nationality was difficult, especially where different national groups were mixed or simply geographically distributed within a territory. His argument for assimilation, however, was overtly paternalistic and ethnocentric. Like many other thinkers of his time, Mill differentiated between “great nations” (such as France, Italy, England, Spain or Russia), which he saw as “more civilised,” and “small nationalities” (Basques, Galicians, Bretons, Scottish, etc.) which he considered to be inferior and backward. For this reason, he argued that it was undoubtedly best for the latter to assimilate and become part of the former. This sort of prejudices led other nineteenth-century liberals to support the political independence of what they considered “great nations.” Usually, the moral case for the domination of one culture over “inferior” others also resorts to the existence of certain universal values which all groups have the duty to uphold. This discourse, as Luis Villoro says, covered colonialism with a mantle of benevolence. As reflected in Mill’s writings, the dominant is portrayed as the bearer of a “universal” message whose revelation to other peoples constitutes an undeniable good that justifies the usurpation of power.

Needless to say, most minority cultures did not share these views. Nation-building programmes did not always succeed in obliterating diversity. In many states, territorially concentrated minorities strongly resisted the pressures toward assimilation into the dominant culture blessed as “official.” As Kymlicka explains, these were typically national minorities that had historically exercised some sort of self-government, but were forcibly integrated into the state as a result of conquest,
colonisation or because of the division of territories among different empires. Many of these groups slowly became politically mobilised along lines similar to those that had legitimised the emergence of the nation-states, largely because the appeal to the principle of nationality was seen as the appropriate way to succeed in their demands of autonomy and self-determination.

Political sociologists typically discern several stages in the awakening of a “national consciousness” in cultural minorities. Initially, the contrast between their identities and the institutionally propagated one produces discontent. Thus, against what is sometimes assumed, the increase in the contacts between groups does not necessarily lead to a perception of the factors that unite them, but to the confirmation of their differences and, eventually, to the awareness of both exclusions and privileges. While self-consciousness is a key prerequisite of ideas of nation and nationality, this subjective component is more likely to arise when there is a clear perception of difference. As Connor puts it, “the conception of being unique or different requires a referent, that is, the idea of us requires a them.”

The more a group suffers from progressive marginalisation in the decision-making processes and institutional representation, or through lack of security or the economic deterioration of their region, the more uneasiness increases. Montserrat Guibernau argues that, typically, the expansion of a national consciousness commences with the activities of small groups of intellectuals who fight to restore or maintain their language and culture. This phase is distinguished by the fact that the activities conducted by the elites have few possibilities of being successful and are usually carried out secretly, on the outer limits of legality. Nevertheless, a form of “nationalism of resistance” emerges that attempts to pursue simultaneously their own nation-building project in order to seek some sort of communal autonomy on the basis of a power-sharing arrangement. The existence of competing forms of nation-building expressed in political terms creates tensions, especially since the majority perceives cultural minorities as disloyal and threatening. Faced with this reaction, these groups progressively come to perceive themselves as “nations without a state,” and engage in the enterprise of “liberation,” a struggle aimed at obtaining, or regaining, their own political institutions or even to seek secession. This road is often a difficult one and, irrespective of the outcome, it involves exclusion and intolerance, and normally represents a loss in terms of status and respect. In any event, as a result of minority nationalism, the traditional identification of states with nation-states becomes controversial.

Along these lines, it can be argued that violent disputes concerning nationalities such as those in the Basque Country and Northern Ireland can be seen as a delayed consequence of processes of nation-building that led to historical exclusions. Tamir sees the rise of minority nationalism as a rather inevitable phenomenon, given that the links between universalist democratic ideals and the national ideology only reflected the socio-political powers of the time. Veit Bader uses the term “chauvinistic universalism” to refer to this ideological strategy consisting of universalising the particular. In this situation, cultural minorities face a dilemma: they either assimilate and lose their own identity and culture (gaining, perhaps, higher consideration and influence in the political sphere); or they mobilise and struggle to seek some form of recognition of the rights and powers associated with autonomy and self-government (but remain marginalised from the major institutions of society in the meantime). We could
find examples of both strategies. In France and Italy, for instance, policies of assimilation had quite successful results. But in other European countries, such as the United Kingdom, Spain or Belgium, a number of minorities strongly resisted nation-building policies. In North America, a similar response occurred in Quebec and Puerto Rico, as well as with the indigenous tribes subsisting in the continent.

The case of immigration raises specific issues that will be taken up with more detail in Chapter VI. Generally, though, most immigrants seem inclined to integrate (and should integrate, according to some opinions) into the predominant culture of the host society, especially to the extent that the decision to migrate has been adopted voluntarily. Yet it is unclear whether the situation of most migrants can be understood in this voluntarist pattern, and, in any event, there are significant exceptions to it, such as refugees and African Americans that, as Kymlicka notes, normally strongly object to assimilation into another culture. As a matter of fact, the geographic dispersion of immigrants of the same origin in their new country makes it difficult to formulate claims with nationalistic undertones. Besides, the most recent immigrants do not have the resources and organisation to mobilise along political lines. Even if this is possible, they are usually more interested in fighting against discrimination, poverty and social subordination, rather than in seeking more radical forms of identity recognition and autonomy. As a result, the debate on the rights of ethnic minorities does not generally revolve around building separate institutions or political autonomy. Rather, the dispute is largely focussed on the demands of recognition of different ethnic origins, cultures and backgrounds within the common political institutions.

In short, the politicisation of ethnic minorities has primarily to do with their opposition to a certain model of integration, namely pure assimilation, rather than to integration per se. The increasing scale of immigration in Europe makes it likely that demands which to-date have been associated with societies that had historically experienced high percentages of immigration (such as Canada, the United States or Australia), will now raise similar controversies in the Old World. These controversies can thus no longer be considered part of the “American exceptionalism,” to borrow Walzer’s expression. In countries like Spain and France, where the majority has traditionally set high standards for inclusion through assimilation—aiming at bringing in immigrants without incorporating their cultural differences—the transformation of the society is already having a huge impact on the conventional forms of envisaging education, religion, commitment to the state and toleration.

As mentioned, immigrant patterns of mobilisation and claims will be addressed in more detail later on in this book. For present purposes, it is relevant to note that it seems logical that the triumph of a monopolistic idea of the State that bestows universality only to one nation and denies political identity to other culturally discrete groups, would inevitably lead, as it did, to political mobilisation by those who suffered the burdens imposed by this idea. And yet, as indicated in the introduction, the idea that cultural diversity involves no significant challenges for integration and justice in democratic states has been a widespread, even if implicit, supposition. This is, in part, the reason why the Western political tradition has been, until very recently, silent on issues related to minority rights. As Kymlicka notes, contemporary liberal thinkers such as Dworkin and Rawls commonly assume an ideal model of the polis in which states are nation-states with an homogeneous culture and citizens share a
common descent and language. This is the reason why he shares Tamir’s view that most liberals are, in fact, liberal nationalists.

However, this predominant model of the polis obscures some forms of discrimination involved in the domination usually exercised by the cultural majority. This is a central point also emphasised in recent literature on liberal nationalism, which argues that the progressive spreading of a liberal political culture is not sufficient to bring about the kind of social and political integration required in a multicultural polity. Pointing to this fact, Margaret Moore has explored some of the main misconceptions inherent in the Enlightenment tradition and what she calls its “dream of a cosmopolitan global culture.” In particular, Moore stresses that the reemergence of minority nationalism is not the product of an irrational quest to counteract the globalisation of the economy and the slow erosion of certain conceptions of absolute sovereignty and the nation-state model in the post-modern era. Rather, recent transformations have opened up new political spaces in which national minorities and other non-territorial identity groups can operate and flourish. For instance, Catalonia and Scotland could then progressively become less dependent on their host states than on new developments in the supra-state sphere, and this might renew the vitality of minority nationalism. Indeed, minorities now seek new forms of recognition as self-governing units within international political institutions. Perhaps secessionist claims will become gradually meaningless in a context where states have already lost many of the responsibilities that traditionally justified their very existence. Nevertheless, the present age opens the door to new forms of managing ethnocultural conflict and accommodating national minorities within emerging international regimes with more complex and fragmented systems of authority.

It is not possible to discuss here the relative strengths and weaknesses of the argument outlined. But, hopefully, enough has been said to support the general point that there are several elements of the tolerance approach to diversity that can be seriously disputed; key among them is the claim that state neutrality, or “benign neglect,” has historically been a central feature in liberal theory and practice. Even if this approach has been present in political rhetoric and in some philosophical works primarily concerned with freedom of religion, the practice of nation-building shows a clear involvement of liberal states in the realm of culture. This fact is crucial for understanding the roots of contemporary struggles for self-government and recognition. In what follows, I will seek to draw some lessons from the discussion so far as regards the coherence of the tolerance model.

4. ILLUSIONS OF NEUTRALITY AND THE TOLERANCE MODEL

4.1. State Interference and Cultural Domination: Past and Present

Faced with minority nationalism and the demands of other non-territorial cultural groups, most states (democratic and non-democratic) have reacted similarly. They have attempted to dismantle these movements and promote the assimilation into the dominant culture in order to conflate the nation and the state. A cursory glance at political developments over the last few centuries shows that the construction of the nation-state involved substantial inconsistencies of far-reaching effects. For example,
there was a contradiction between the doctrine of equal freedom and practices like women discrimination or school segregation. In relation to national minorities, some European countries such as France or Great Britain were ready, in the later stages of the colonial period, to grant some of their colonies independence, but, in general, governments were not inclined to allow a democratic process of self-determination within their territories. Moreover, some leaders of the so-called “liberation movements,” once they had seen their aspirations to independence fulfilled, adopted the same nation-building patterns to assimilate their own internal minorities. This inconsistency can be observed in the history of the new African and Asian countries after the decolonisation phase, and more recently in Eastern Europe where many of the new governments have tried to eradicate any aspirations to autonomy or independence by minority groups.

Of course, the means and the underlying public justifications have changed over time. In the past, state coercive policies imposed on minorities were justified through openly ethnocentric and paternalistic arguments; today, most citizens in democratic states would reject both those policies and this justification. Increasing awareness of the value of human rights as well as of the binding nature of democratic constitutions imposes severe restrictions on homogenising campaigns. To the extent that states want to discourage cultural minorities from pursuing their political aspirations, they cannot do so by simply restricting their members’ rights and freedoms. Hence, many of the old coercive strategies based on arbitrary force would now be regarded as anti-democratic and unconstitutional. Nevertheless, the pattern described in the earlier section cannot be merely regarded as part of a contingent political praxis. As was pointed out, some of the most influential liberal philosophers of the nineteenth century supported those policies. And the cultural essence of states was key in delimiting and defending the legitimacy of political borders. The voluntarist aspect that, according to Renan, defines a civic idea of nation has thus been relatively absent in the building of today’s democracies.

This conclusion allows for a first criticism of the tolerance approach: namely, that this approach requires an understanding of liberalism in ahistorical terms, one which ignores the fact that nation-building and not “neutrality” has been the rule in the past. Against this objection, defenders could respond that the process of nation-building belongs to history and that, regardless of the relative achievements or failures in the promotion of cultural homogeneity, this goal no longer represents a priority for present-day democracies. But this claim would be largely groundless, as most states continue to accord fundamental importance to the cultural realm. This is reflected in the political discourses that justify legislation in matters of immigration and naturalisation, education curricula, official language and other policies such as financial support for preserving the cultural heritage (which is frequently referred to as the “national” heritage). Similarly, the power of symbols (flags, monuments, “national” anthems and holidays) should not be underestimated; through them, cultural forms are invested with an inter-subjectively shared meaning. Thus, politicians strategically resort to them with the aim of managing processes of social interaction, transmitting the message that states are historical communities, not merely voluntary associations. As Geertz emphasises, symbolic structures have a cognitive dimension in that they contribute to structuring the way people think about social life. Some
of these public symbols representing the state's history can become tokens for perpetuating the domination of cultural majorities. In this case, conflict is likely to arise as minorities disturb or question their worthiness or meaning.

The opinion of culturally discrete minorities will have little influence on decisions concerning the cultural sphere. In a democracy, except for individual rights, the majority decides on all matters of public relevance. For this reason, minority nationalism has evolved in an essentially defensive form. Demands for group rights are generally intended to counter the bias in the cultural aspects of government policies. Under such circumstances, the lack of identification with the state, and the perception of it as an alien institution, often facilitates the growth of a strong sense of community and solidarity among the members of minorities who oppose strategies of cultural hegemony. These links strengthen different forms of minority nationalism aimed at a redistribution of political agency. As I will emphasise in the next section, these movements often bring cultural imperialism and majority domination to a halt, introducing more egalitarian relations between the different nations coexisting within a state. This has certainly been the aspiration of the nationalists in Quebec, Catalonia, Flanders and Scotland where nationalism is linked neither to the preservation of essentialist pre-modern values, nor to the ethnocentric affirmation of their superiority over other cultures. As Taylor explains in the case of Quebec, the new nationalism that emerged in the 1960s aimed neither to isolate this Canadian province, nor to defend a civilisation based on the primordial value of the French language and Catholicism. The chief purpose was to restore the central role of the Quebecois in the transformation of their society, since, at the time, economic, linguistic and legal rules were being established by the English-speaking community, which was both financially and politically dominant. French–Canadians were thus disadvantaged; they were in a similar position as immigrants, which are expected to master another language and conform to another way of living, forgetting their own background, if they want to succeed.

The same explanation applies, mutatis mutandis, to the other groups that have been mentioned in the United Kingdom, Belgium and Spain. In the New World, the historical claims of Mexicans in the South West of the United States have been also primarily aimed at averting the impact of the Anglo-Saxon cultural and financial imperialism, which has made these minorities feel like "foreigners in their own country." Like the Quebecois, they have alleged that, historically, the "immigrants" were in fact the North Americans. More recently, the debate on the political status of Puerto Rico provides a further exhibition of the extent to which "Americanisation" through language is still an essential objective in the United States. Leaving aside the complexities related to the division of Puerto Rican society on this issue, the linguistic factor is regarded as essential in this controversy. From the United States' perspective, Puerto Ricans should give up Spanish if they wish to integrate as a full member of the Union, while on the island the predominance of this language is largely regarded as non-negotiable. Granting special linguistic rights or revising the terms of the federation in order to accommodate this diversity seems to be out of the question. Moreover, the decision to admit a culturally different state into the federation seem to be as important for the United States as for Puerto Rico, since the admission of new states has always been guided by an express or tacit condition related to English as the common language.

---

TOLERANCE, NEUTRALITY AND GROUP RIGHTS
One could argue that, in situations such as the one described, the official interest in cultural homogeneity has been largely expressed through attempts at linguistic assimilation, and language is only a means of communication; so, to pursue an official language policy unsupportive of linguistic pluralism does not necessarily lead to cultural assimilation, since people could still use their native languages in the private sphere. But this is an implausible statement. As a number of socio-linguists and political theorists have persuasively argued, cultural survival in modern societies strongly depends upon whether the language that can transmit it is used in the public domain. A key determinant in this sense is, as Kymlicka puts it, whether a culture’s language “is the language of government,” and, especially, the language of public education, since this will guarantee “the passing on of the language and its associated traditions and conventions to the next generation.” Since the regulation of the public sphere has an inevitable linguistic dimension, a duty of non-interference by the state cannot be the answer to accommodating the interests of minorities. In other words, it is not sufficient—as some sort of linguistic laissez-faire derived from the tolerance model might suggest—to oppose state intervention in the use of minority languages in the streets, homes, in private correspondence, in names and surnames or in civic associations. As Stephen May compellingly argues, apolitical and ahistorical approaches to language often take the “state” languages (as the “official languages”) as a given, without questioning how they came to be accepted as dominant and legitimate nor addressing complex issues related with the advantages that members of the dominant language group enjoy in crucial areas of administration, politics or the economy.

Linguistic claims thus raise far more complex problems than whether or not people should have certain linguistic rights derived from their individual rights to, namely, privacy or freedom of speech. In addition, most people value their mother tongue not only instrumentally, as a tool for communication or as a means for political participation, but also intrinsically, in Réaume’s words, “as a marker of identity as a participant in the way of life it represents.” Languages represent for people “a repository of the traditions and cultural accomplishments of their community.” In fact, the reason why most states have given prominence to their linguistic policies is that they have understood that language, rather than being just another cultural element, carries and structures thought: “it is through language that we experience the world and [have] the simple pleasure to be [ourselves].”

In short, the impact of decisions aimed at suppressing linguistic pluralism from the public sphere should not be underestimated. Language, culture and law have deep reciprocal relations. Because of its potential to impinge on the institutions of cultural minorities and debilitate them, most states accord great importance to linguistic policies. Of course, there are other more coercive and direct means to influence the consolidation of a particular culture. Some states promote the settlement of members of the majority culture—or new immigrants—in the geographic area that has been traditionally occupied by a national minority, as indicated earlier. This and other policies—such as redrawing internal constituency boundaries to provoke the division and disempowerment of ethnocultural groups—have been deliberately used in order to weaken the organisation and structure of the group, reducing it to a minority in their own traditional territory.
As the discussion so far has hopefully made plain, the tolerance approach fails to recognise both the historical trends and the present practices of various liberal democratic states in relation to nation-building. Perhaps recent political developments point to a modest reversal of traditional assimilationist policies; especially, if we take into account that some of the demands of both national minorities and immigrants are being increasingly recognised in some states. Thus, Spain, Belgium and the United Kingdom, among others, have adopted federal formulas with the specific purpose of accommodating diversity and granting some form of territorial autonomy to their national minorities.\textsuperscript{191} Both as a theory and as an institutional arrangement federalism implies the territorial allocation of power.\textsuperscript{192} Given the internal pluralism of those states, the redistribution of political agency is emerging as the best way to make compatible the common aspirations of the state and the preservation of the interests of minority cultures. This increasing trend towards the adoption of federal or quasi-federal forms of government could thus be interpreted as a sign of the increasing acceptance that cultural diversity should be accommodated rather than suppressed.

In relation to linguistic pluralism, the increasing valuation and public recognition of minority languages is worth noting as well. In fact, official multilingualism is now the rule in most democracies. In Europe, even Italy has opened the door to the use in pre-primary and primary schools and, in some cases, in deliberation of local assembles (city councils) of eleven languages other than Italian.\textsuperscript{193} The European Union and its institutions are also seeking to transmit the image of an inclusive multilingual supranational polity that supports and sustains multiple languages and identities, since its legitimacy depends very much on its inclusiveness in terms of enhancing a multitude of attachments and identities.\textsuperscript{194}

But even if a trend toward the recognition of cultural diversity (at both the domestic and the international level) can be perceived, it remains unclear whether this evolution marks a substantial change of perspective concerning ethnocultural justice. It could simply be interpreted as a modification due to increasing pragmatism, rather than a sign of the progressive recognition of the unfairness of previous ways of managing diversity. In any event, this is a difficult issue that I shall not pursue further. However, note that, if the more realistic account was correct, the recent evolution would not necessarily show the increasing acceptance of the legitimacy of cultural claims or, generally, of group rights. It could simply mean that, since states cannot resort to the old means of cultural suppression (due, above all, to the constraints imposed by basic standards on human rights) a pragmatic approach needs to be adopted for the sake of peace or security, rather than to honour certain ideals of justice.

4.2. Beyond History: The Tolerance Approach as an Ideal?

Despite the evidence that liberal states in general have not been, nor are, neutral with respect to culture, supporters of the tolerance model could still argue that this claim does not impinge on the moral ideal that is at stake: while historical experience and current practices show that liberal states do interfere in the cultural realm, they should avoid this intervention. The policies and practices described so far would thus be simply unjustified. The question remains, consequently, as to whether, from a liberal
perspective, tolerance still provides the best basis for designing political institutions in multicultural states.

The answer, I think, is negative; especially if we take the tolerance model as implying the idea that, in principle, the state should adopt a “hands-off” approach to culture. Let me spell out the main arguments in support of this thesis. First, it is important to realise that the link between liberal government and intervention in the cultural realm is not merely contingent but necessary, as it is impossible for the modern state not to make decisions in this sphere. Kymlicka puts particular emphasis on this point that, as will become clearer in the next chapter, occupies a central place in his theory. If we assume this, then the analogy between religion and culture, so often invoked by defenders of the tolerance approach in their call for state abstention in cultural matters, is particularly unfortunate. For while it is possible to imagine a completely secular state, no political structure can be entirely “acultural”:

\[\text{[M]any liberals say that just as the state should not recognise, endorse, or support any particular church, so it should not recognise, endorse, or support any particular cultural group or identity. (\ldots) But the analogy does not work. It is quite possible for a state not to have an established church. But the state cannot help but give at least partial establishment to a culture when it decides which language is to be used in public schooling, or in the provision of state services. The state can (and should) replace religious oaths in courts with secular oaths but it cannot replace the use of English in courts with no language.}\]

Decisions, indeed, must be made concerning the content of education, the language that must be taught in schools and used by the government and the public media, the policies of immigration and citizenship, the distribution of electoral boundaries, public holidays and symbols, etc. Whenever the criterion is in the majority’s interest—which will normally be the case given the pressures for it to be so—minorities will probably end up being largely ignored. In addition, as indicated above, cultural and linguistic habits always require, in order to survive in the modern world, institutional presence and therefore, defenders of the tolerance approach—especially those who, like Galston, stress the value of diversity—should be concerned with the outcome of the strategy that they defend.

Hence, the view that members of cultural minorities ought to be able to develop their interests in a context where the state plays a passive role is a rather implausible one. This is, above all, because modern states can hardly be portrayed (as in Kukathas’ theory) as mere associations performing basic regulatory powers that do not need to affect cultural communities choosing to remain at the margins of society. Liberal democracies today play a strong role in the distribution of social goods. The state is no longer a police state; instead, it intervenes by making key decisions in the economic and cultural realms. Hence, to picture the coexistence of different identity groups in multicultural states in terms of voluntary associations, as the tolerance model tends to do, involves high costs for cultural minorities that have no influence in the political sphere and, more generally, in the configuration of the public realm. Even if \textit{laissez faire}, instead of cultural assimilation, became the explicit policy as regards cultural minorities, this could still lead to a \textit{de facto} assimilation of members of these groups or to their progressive marginalisation. After all, state laws, practices, symbols and institutions have been shaped by the historical dominance of the
cultural majority, and this inevitably results in the perception that they are the property of this group. Thus, an analysis that takes no account of how particular states and cultural groupings have been formed is misplaced, leaving unanswered fundamental questions of legitimacy.

A variation of the tolerance approach could endorse this argument but still insist that the duty to realise the interests of cultural minorities rests with the communities themselves, as free associations—that is, minorities could pay for what they want and the state should refrain from interfering with their preferences, as Comanducci suggested. Even if we acknowledge the brutality of the coercive policies intended to assimilate cultural minorities that were adopted in the past, the situation today in most liberal democracies—say, for instance, of predominance of one language—cannot be attributed to an explicit intention of discriminating minorities. Hence, in this view, members of minority cultures are free to choose between preserving their cultures and languages and integrating in the wider culture, and the state should remain neutral in this respect—i.e., without interfering through helping those who prefer retaining their cultural identities. Thus, for example, minority language speakers should have the real opportunity of learning the majority language or else remain attached to their languages at their own cost. This cost would include possible constraints on social mobility and market disadvantages.

There are several problems with this position. Most obviously, there is a problem of consistency and double standards. As May rightly points out, in discussions over minority languages and other cultural claims, it is common to picture them as grounded on an irrational preference (based on sentimental reasons) of preserving traditions and cultures, even if this represents an obstacle to social progress and mobility. Instead, majority languages and cultures are accorded an instrumental value, since they provide individuals with greater opportunities. Therefore, “if minority language speakers are ‘sensible’ they will apply a version of rational choice theory and opt for mobility and modernity via the majority language.”

If, on the contrary, they choose to keep their own languages they can only be regarded as “happy slaves.” Brian Barry, who can also be counted as an associationist liberal, makes an argument along these lines when he discusses the issue of language. Throughout his work, the predominance of certain languages as official ones seems to be taken as an inevitable and unproblematic fact (omitting the historical processes that have led to the hegemony of certain languages) and praised for its instrumental value, since mastering the official language is a condition for full access to employment and public services. In contrast, when it comes to assess the case of the Welsh language, he is sympathetic to the complaints of English-speaking parents that oppose compulsory instruction of Welsh in schools. In his opinion, the labour market advantages created by local authorities for those who have educational qualifications in Welsh discriminates English-only speakers.

But in addition to the problem of consistency, this account suffers from two other weaknesses. On the one hand, it wrongly construes the position of minorities as if they wanted a plus that the majority does not already enjoy: in the Welsh example, the right and capacity to live and work in their own language. But here, the state cannot be neutral merely by avoiding to endorse demands of group rights of minorities, for it is already involved in promoting the cultural rights of the dominant group in its 

TOLERANCE, NEUTRALITY AND GROUP RIGHTS

121
public policies (policies, by the way, that are normally partly funded through the contributions of cultural minorities). In this way, from a liberal egalitarian perspective, the previous account is also misguided because it overlooks the fact that cultural minorities face a singular disadvantage not shared by the majority. As Taylor argues with regard to the case of language, if a society has an official language “that is, a state-sponsored, -inculcated and -defined language and culture” in which both the economy and the state function then this is an enormous gain for the native speakers of this language and the culture associated with it. Hence, “[s]peakers of other languages are at a distinct disadvantage.” For this reason, the idea of resolving the demands of minorities in the private realm is unsatisfactory. If we accept that, in our contemporary world the separation of state (or law) and culture is unfeasible, then the requirements of a “free cultural market” would not be met, given that not all languages would compete under equal conditions.

Moreover, in an instrumental account of the relevance of languages and cultures, such as the one that defenders of the perspective just sketched seem to accept, the more consistent conclusion should be to reject entirely the morality of state official languages in the increasingly globalised world that is ours. Think of the EU context, for instance. According to the argument above, the fact that most Italians only learn Italian or most Spaniards Spanish represents an obstacle for their mobility and occupational prospects. So, for the same reason, shouldn’t we recommend that Catalans learn English instead of Spanish as their main language (given that their range of opportunities will surely increase)? Unfortunately, opponents of group rights almost always assume as unproblematic state borders and cultural and linguistic hegemonies as historical faits accomplis, and hence they stop short of answering these complex questions.

On the other hand, the problem of disentangling past and present and depicting the options of minorities in oppositional terms—in the case of language, as a choice between education in either the minority or the majority language—obscures the existence of alternatives, such as rethinking the state in a more pluralistic way through the facilitation of multilingualism by recognising language rights (or, more generally, adopting multicultural policies). This has been the pattern adopted, among other countries, in Spain or Canada, and bilingualism has become widespread in Catalonia or Quebec.

Finally, the tolerance approach ignores two other fundamental aspects. First and foremost, most cultural and ethnic minorities do not merely protest against restrictions of their “negative” freedom, which prevent them from developing their interests in the private sphere; rather, they complain that “they ought not to be seen as special, narrow and private interests while the culture and the ethnic affiliation of the majority is viewed implicitly or explicitly as representing the general interest.” As should become clear in the following chapters, the issue is not whether an immigrant of Arab origin in Spain should be allowed to dress her daughter in traditional clothes, sing songs in Arabic, or attempt to keep their original language at home. The relevant questions are whether her child may wear a foulard in public schools, whether she will be entitled to receive part of her education in her mother tongue, etc. Analogously, for national minorities, the problem is not whether their members can be allowed to fund private institutions to teach their history, language, traditions and culture in
order to pass them on to the next generation. The real challenge is whether public education, access to state institutions, or certain control of the media should be guaranteed also in their particular languages; whether they should have the right to choose their own public symbols (names of streets, flags, monuments) in their traditional territories, etc. In short, tensions arise when individuals wish to see their cultures reflected in the public domain, a fact that the tolerance model, with its emphasis on the privatisation of culture, tends to neglect. In this sense, this model cannot appear as a solution to accommodate the demands of cultural minorities.

This perspective—namely, that many cultural minorities are not isolationist groups but want to contribute to shaping public institutions as well as the public sphere of their own society—also raises serious problems for the central corollary of the freedom of association that most proponents of the tolerance approach see as central: the right to exit. Only few groups want secession from the state (a strategy that is often adopted as a last resort), but most would instead prefer to be recognised as equally able to contribute to common public institutions, so that these institutions would cease being the patrimony of the cultural majority and start reflecting the plurality of groups and cultures that underlie the superstructure we call "state."208

Secondly, it is important to note that the idea of choice plays only a marginal role in membership in the type of groups we are discussing, and this points to another shortcoming of most versions of the tolerance model. Contrary to what its advocates often assume, national and ethnic identities are not commonly chosen: normally they are acquired at birth and kept throughout all life. This is why Margalit and Raz contend that "membership [in these groups] is, in part, a matter of mutual recognition;"209 it is "a matter of belonging, not of achievement."210 This is another reason why confronting the conflicts of multiculturalism through the prism of freedom of association is problematic. To be sure, this is acknowledged by some proponents of the tolerance approach, but, in general, they are inclined to answer that if exit rights are guaranteed, an individual’s remaining in the group should be regarded as voluntary.211 Certainly, collective and individual identities are not unchangeable and some people (and entire groups) are able to reassess and revise their cultural ties;212 yet usually this choice involves immense personal effort and adjustment. Moreover, assimilation into another culture not only depends upon one’s own will or personal achievement, but its success often requires recognition by others (and there are no pre-established rules about how to achieve it). Indeed, even if a person expresses her preference to be British, meets all the formal requirements necessary to acquire British nationality, renounces her first nationality, speaks perfect English with the right accent and adopts local habits, there is still the chance that she will be regarded as a foreigner. In other words, even if we think she “deserves” to be identified as “one of them,” perhaps “they” will never be able to see her in this way. Similarly, even if Hispanics in the U.S. choose to fully integrate into the mainstream society (“dissolving” their associations and giving up on their linguistic claims), this does not guarantee them that they will not continue being perceived as second-class citizens. The main point, however, it that, even in case they succeed, this still does not permit the conclusion that there is nothing wrong in forcing cultural minorities to make this difficult choice (even if indirectly, by not providing them with the same resources that the majority has to develop their own culture). After all, it would be unfair to force
people to pay the cost of changing circumstances that they have not chosen voluntarily.

Summing up, law and politics both have an intrinsic cultural dimension that should be acknowledged. Terms such as "non-intervention" or "benign neglect" are thus misleading: they reinforce the illusion that, if only neutrality was strictly applied through a strategy of privatisation of cultural conflict, cultural minorities would be able to survive at the state's margins. Surely, if this were the case, there would be no need for a theory of group rights, or for a model of multicultural citizenship. But, for the reasons described, a general principle of non-interference by the state in the cultural realm is untenable in the modern world and can only lead, by omission, to privileging a status quo that, in most cases, only reinforces the privileges of the dominant group. If this is accepted, proponents of the different versions of the tolerance approach analysed before should be equally troubled by the results of their argument.

5. GROUP RIGHTS AND NEUTRALITY

Thus far, I have argued that the tolerance approach is unsatisfactory and suffers from flaws that are difficult to overcome. In addition, confronting the problem of cultural diversity in this way is an inadequate interpretation of the liberal tradition itself. I will develop this thesis more fully in the chapters to come, but before that, it is important to clarify that the rejection of the tolerance approach does not necessarily lead to a critique of the idea of state neutrality as such, but only to that of one particular understanding of what neutrality requires in the realm of culture. This section tries to recapture a different conception of this principle, and it seeks to show that, if interpreted this way, neutrality does not have to be at odds with group rights. In order to clarify the basis of my argument, I will start by examining in some greater depth the grounds for neutrality and its implications as regards state action.

5.1. Consequential and Justificatory Neutrality

As I have stated before, neutrality is concerned with establishing the basis of the relationship between the individual and the state, and it thereby shapes the sphere of liberal politics. Liberals strongly insist that a central tenet of a liberal state consists in an entitlement of its people to a neutral concern from their government—that is, public institutions should treat individuals equally, regardless of their diverse conceptions of the good. Surely, liberals have supported neutrality for a variety of motives that are mostly linked to different understandings of the liberal state. Yet, in general, the emphasis on neutrality is motivated by an optimistic view about the possibility of agreement on the principles that should govern political institutions, notwithstanding the different, opposed, and even incompatible values, interests and conceptions of the good existing in society. Such pluralism should be respected through a policy of neutrality precisely because it is a precondition for—and a result of—freedom, and, as will be made plain in this section, liberals have traditionally understood that protecting freedom constitutes the best way of respecting individuals. For this reason, in a liberal society, individual freedom prevails, even if some ways of life or ideas of the
From this derives a trait—anti-perfectionism—that becomes decisive in developing a theory of justice such as Rawls', that has the purpose of conceptualising a “well-ordered democratic society” and of distinguishing it from a mere association of individuals. A liberal society is a complete order, Rawls says, in the sense that “it is self-sufficient and has a place for all the main purposes of human life.”

But beyond this common standpoint on political legitimacy, the implications of liberal neutrality are not straightforward (in part because, as we have seen, there are strong disagreements within liberalism as to how freedom should be interpreted). In politics, the clash between personal moral values or commitments is present in everyday disagreements and so the question arises as to what sort of restraints are appropriate in order for public institutions to fulfil their aspiration of equal respect. Confronting this issue, Raz points to a number of ambiguities that are often obscured in the debate. In his view, a distinction should be drawn between at least two ways of conceiving the doctrine of neutrality. The first relates to the exclusion of ideals in the reasons for action. State neutrality allows individuals to act freely when realising their particular conceptions of the good in the private sphere, but only as long as they can do so without resorting to political means. Hence, the anti-perfectionist principle implies that the state should refrain from adopting legislative measures specifically aimed at favouring certain plans of life. This standard of impartiality precludes appeals to the truth or to the authoritative weight of particular conceptions of the good for justifying the adoption of public policy:

Excluding conceptions of the good from politics means, at its simplest and most comprehensive, that the fact that some conception of the good is true or valid or sound or reasonable, etc., should never serve as a reason for any political action. (...) The doctrine of the exclusion of ideals claims that government action should be blind to all ideals of the good life, that implementation and promotion of ideals of good life, though worthy in itself, is not a legitimate object of governmental action.

Raz ascribes this version of neutrality to Nozick, but, as our previous discussion has made plain, Ackerman, Galston and Kukathas also seem to share this conception (even if for different reasons).

The second way of understanding neutrality is that of a “neutral political concern”, where acting neutrally means, in Raz’s words, “to do one’s best to help or to hinder the various parties in an equal degree.” The basis for this conception is the understanding that, even if the constitutional framework is neutral—in the sense of granting all citizens an equal opportunity to pursue and revise their own ends in the private domain—the law does not require a complete exclusion of substantive moral ideals. On this understanding, ethical conceptions can be integrated into the wide range of reasons that are part of political and legal argument. Consequently, contemporary legal systems, and the realisation of their constitutional principles, are “the expression of a particular form of life, and not merely a reflection of the universal content of basic rights.” Nevertheless, neutral concern is satisfied to the extent that the appeal to moral beliefs or ideals by the government does not amount to favouring certain conceptions of the good life to the detriment of others. In other words, rather than requiring the exclusion of ideals from the justification of public
policies, the decisive point here is that these policies should not lead to endangering, or discriminating against, competing world views or life projects.

Following Kymlicka's terminology, we can call these two conceptions “justificatory neutrality” and “consequential neutrality” respectively. An example may help to illustrate the different implications of both accounts. Suppose that a government is considering the legal reform of a statute in family law making it impossible for same-sex couples to marry and adopt children. The deliberation leads to a broader discussion about whether there are compelling reasons for upholding this and other longstanding laws targeting homosexuality. Justificatory neutrality would require that, regardless of the final decision, the grounds for making it do not hinge on comprehensive ethical or religious ideals that are claimed to be true. For instance, the reason underlying the government’s interest in circumscribing personal choice should neither be the fact that homosexual conduct is socially condemned as immoral, nor that it is incompatible with the Christian tradition. Rather, public justification should be somehow connected to the kind of criteria related to what Rawls calls “political correctness” which, in general, lies behind the configuration of civil and political rights. The extent to which the resulting legislation can qualify as “liberal” will thus depend on a certain rationale, since contributions to the public debate ought to satisfy certain constraints.

Admittedly, this restriction can occasionally be vague and to make sense of it would require a deeper analysis that I cannot undertake here. However, the central idea is that we should move beyond our personal standpoints when looking at matters involving moral beliefs and convictions, assessing the issues involved through the filter of certain principles or premises upon whose correctness we rationally converge. Hence, the state regulation on these matters cannot be decided on the grounds of “I (we) believe this is right or this is wrong.” Thus, returning to the previous example, those who argue against the restrictions imposed by family law on gays could do so on the grounds that there are substantial reasons why these unions are entitled to the same formal recognition under the law; or they could hold that the Constitution confers a fundamental right to marriage that the government cannot legitimately restrict to certain categories of subjects. Similarly, as far as adoption is concerned, the legal restraint here could not be defended on the grounds that the state ought to enforce some kind of personal morality—for instance, through preserving the traditional role that women and men have played in rearing and bringing up their children.

In sum, in order for the state to qualify as a liberal state, public reasoning must be subjected to restrictions. This first conception of neutrality defines the terms of the public discourse and excludes justifications for policies based on particular religious beliefs, ethical doctrines and ideas of the good, so that none of them becomes privileged as compared with the others.

If what it is intended is, instead, to attain consequential neutrality, such restrictions will operate differently. In such case, the political debate concerning the appropriateness of a certain legislative amendment on an issue involving controversial moral or religious conceptions could legitimately include arguments regarding their value. Moreover, it is assumed that public resources can be distributed in such a way as to enhance them. For example, a political campaign aimed at encouraging marriage by means of, say, a more favourable tax system, can be justified on the belief of
the intrinsic moral worth of this life option. Similarly, state funding might be given
to denominational schools that carry out religious activities because these are con-
sidered important in reinforcing certain personal virtues. Yet, according to this con-
ception, the outcome of such policies should not hinder or undermine the
opportunities to undertake alternative ways of life that reflect different conceptions
of the good, religious beliefs, etc. In this case, the state should try to balance out this
situation by supporting the values shared by other groups to the same degree. Recall
that consequential neutrality consists of helping or hindering the parties in an equal
degree when a conflict exists between them.

According to Raz, liberals normally fail to distinguish between both conceptions
of neutrality.\textsuperscript{225} Still, he claims that the key notion is the second one, which he calls
“comprehensive neutrality.”\textsuperscript{226} In his view, its appeal in grounding political legitimacy
resides in the fact that there can be no theory of justice that completely excludes
moral conceptions from its own premises. Raz argues that even Rawls’s theory of jus-
tice faces this difficulty,\textsuperscript{227} concluding that the only postulate that can be advocated
coherently is that of a neutral political concern.

But this conclusion is controversial. Although some isolated passages in Rawls’
work might suggest otherwise, the central elements of his theory indicate that the pic-
ture of liberalism that he has in mind does not presuppose the consequentialist ver-
sion of neutrality.\textsuperscript{228} Thus, on the one hand, Rawls strongly endorses the priority of
constitutional civil and political liberties, despite the fact that this precedence would
not necessarily have neutral consequences on certain ways of life. As Kymlicka writes,
“since individuals are free to choose between competing visions of the good life, civil
liberties have non-neutral consequences – they create a marketplace of ideas, as it
were, and how well a way of life does in this market depends on the kinds of goods
it can offer to prospective adherents.”\textsuperscript{229} So, even if it is likely that, under conditions
of freedom, the least valuable or unsatisfactory ways of life tend to disappear, Rawls
does neither regret nor attempt to mitigate this effect.

On the other hand, consequential neutrality also seems inconsistent with the role
that Rawls assigns to primary goods. To a large extent, the justification of their value
lies in the fact that individuals need access to these goods as a means to develop their
different aims. But equality in the distribution of resources does not necessarily have
neutral effects on every way of life: those people whose lifestyles are costly will not
enjoy the same range of facilities as those with more modest ways of living. And yet,
again, Rawls accepts this outcome and relieves the state of the responsibility of sat-
sifying expensive tastes or preferences; for him “[i]t is not by itself an objection to the
use of primary goods that it does not accommodate those with expensive tastes.”\textsuperscript{230}
This view relies on people’s capacity to assume responsibility for their own ends, which,
according to Rawls, “is part of the moral power to form, to revise, and rationally to
pursue a conception of the good.”\textsuperscript{231} In short, Rawls’ anti-perfectionism could be more
plausibly based upon the exclusion of ideals.\textsuperscript{232}

A different question is whether Raz is right in arguing that it is impossible to com-
ply with the requirement of the exclusion of ideals, mainly because the very presup-
positions of Rawls’ theory of justice already incorporate a certain ethos, more
precisely, the idea of equal liberty.\textsuperscript{233} Nagel made a similar observation shortly after
the publication of the \textit{Theory of Justice}, stressing that both the situation of social
choice and the idea of primary goods as defined by Rawls are biased towards a particular conception of the good: Rawls’ society seems to be made up of individuals whose main purpose in life is to maximise their shared social resources and material welfare instead of, for instance, achieving spiritual or collective goals. This complex problem exceeds our main interest here, which is to assess the compatibility of group rights with both conceptions of neutrality. Nevertheless, a few observations are important for our discussion.

Certainly, Rawls’ second major work, *Political Liberalism*, can be seen as an attempt to address this critique, which can affect one of the main virtues that liberalism claims for itself, namely, its defence of political institutions that allow the coexistence of different ways of life, moral values and beliefs. Thus, Rawls reformulated his first conception of justice in an attempt at freeing it from the commitment to comprehensive values such as autonomy. The political order he then envisaged aims at being more inclusive and, hence, at achieving an overlapping consensus among the diverse groups that compose the society. But leaving aside whether this revision succeeds in refuting the critique, the important point to be made here is that, within the liberal tradition, neutrality (in both its justificatory and consequentialist versions), has not been regarded as a value *per se*, but as an instrument in order to achieve other—more fundamental—values. In fact, as we saw earlier in this chapter, disagreements over the reason for this constraint on state action tend to reflect different understandings of liberalism as a political doctrine and of the liberal state, too.

Indeed, it is important to bear in mind the different lines of argument present in that discussion. On the one hand, some find the basis for adopting a neutral standpoint between different beliefs and conceptions of the good in some form of moral scepticism or relativism, even though Rawls and other leading contemporary scholars have explicitly argued that neutrality does not rely on such scepticism. On the other hand, neutrality can also be grounded on prudential reasons such as, for instance, the need to avert the risk of social fragmentation or alienation of minority groups. Although, as explained, this argument plays a role in both classical and recent formulations of tolerance, it will fail to be fully persuasive to the moral objectivist. For it is unclear why somebody will agree to abide by standards of neutrality when this means relinquishing the possibility of being governed by the principles that she sees as truthful. So, as a motivation for accepting that the state should refrain from enhancing partial or sectarian values that are believed to be true, the appeal to social unity seems quite weak.

A third position claims that neutrality enhances the value of pluralism. As explained, this seemed to be the view of Galston and it also drives the thought of authors such as John Gray. But here, I agree with Kukathas that diversity is a fact of life (one that generates the kind of conflicts and problems that liberalism tries to confront) and not the ultimate value that liberalism pursues. Actually, this has been the starting point of this book, although the epilogue will try to open the door to rethinking this claim.

Finally, and this is the line of argument favoured in the analysis so far, one can see the basis of political neutrality in liberty. Although this is not always made explicit (mainly because freedom is so deeply rooted in liberalism that its value is taken for
granted\textsuperscript{241}, in my view, most contemporary liberal scholars can be seen as upholding this logic, although, as explained, there are significant differences depending on what aspect of freedom is regarded as basic. In Rawls’ theory, it is equal freedom which constitutes the decisive premise and, in this sense, it cannot be seen as a procedural version of liberalism. Rawls himself makes this point in order to distinguish his theory from certain accounts of neutrality, in particular, from the idea of neutral principles, as principles that could be endorsed by any person, regardless of her particular comprehensive conception of the good. Justice as fairness, Rawls clarifies, is not neutral in this sense: it does not give equal weight to any conception of the good that happens to be affirmed in society, but rather purports to ensure equality of opportunity to “any reasonable conception,”\textsuperscript{242} namely those that are not incompatible with the basic principles of justice.\textsuperscript{243} This is, in fact, the main reason why Rawls avoids using the term “neutrality” and prefers the expression “priority of the right over the good.”\textsuperscript{244} Hence, in order to reach a public consensus in matters of political justice, a partial similarity between these doctrines will be necessary. Rawls admits that the plausibility of some central notions in his theory, such as the notion of primary goods and the conception of the person,\textsuperscript{245} depends upon the existence of such a similarity in relationship to certain basic moral premises. Only this convergence has the potential to lead to an agreement over the basic institutions of society and therefore, ultimately, “the right and the good are complementary.”\textsuperscript{246}

In short, neutrality is instrumental insofar as liberalism does not aim at adopting a neutral stance as regards some central values.\textsuperscript{247} Of course, if this account is correct, one might ask whether liberalism (especially the form of liberalism defended by Rawls) is too demanding as a doctrine to be able to accommodate diversity.\textsuperscript{248} This concern is obviously present in the works of people who, like Kukathas, argue that the liberal tradition is characterised by a link to freedom of conscience, rather than to autonomy. Yet, this is still another form of understanding freedom as a basic value. For the moment, let us provisionally accept that, although liberalism cannot be a doctrine that states that any value is acceptable, there are still significant differences between a perfectionist state and a liberal one. Whether it is understood as a comprehensive philosophical doctrine or only as a political theory, liberalism has a substantial advantage over other alternative theories as regards the level of tolerance.\textsuperscript{249} Liberalism is less divisive than its rivals in that it is based on a narrower conception of the good which allows for greater inclusiveness and a less oppressive use of state power.

5.2. The Compatibility of Group Rights and Neutrality

The remarks made so far will hopefully be sufficient to reassess the compatibility of group rights with liberal neutrality (on both its justificatory and consequentialist versions), which is the central question that concerns us here. Critics of group rights who endorse the tolerance approach stress the potential of neutrality as a political virtue to accommodate cultural minorities and other group-based identities. But we are now in a better position to see why, regardless of the conception of neutrality preferred, this contention is unjustified.

Above all, as we have seen, the state must necessarily take decisions affecting the cultural realm and has taken them in the past. Hence, group rights could be justified
as a way of ensuring that members of minority cultures do not suffer a disadvantage in this regard; that is, neutrality could simply consist in guaranteeing the greatest possible impartiality in contexts where the cultural majority is politically decisive. This is the basic idea underlying the notion of consequential neutrality. If the majority has an interest in controlling immigration, in ensuring that education and other public services are provided in their language, in regulating the contents of education, in the designation of public holidays, or in choosing the national symbols, why should minorities be denied access to the same instruments in promulgating their cultures? We could say, along with Kymlicka, that this is a paradigmatic case in which equality requires a different treatment, so that minorities enjoy the same opportunities as the majority to maintain themselves as distinct cultures.

Yet, one could still wonder why the state should be neutral as regards to cultural identities, equalising the means for cultural reproduction. The answer here has to do with the role that culture exercises upon individual well-being. Chapters V and VI discuss this thesis in more detail. As far as the morality of nation-building is concerned, this is not grounded upon the degree of truthfulness of history, myths and traditions originating in this process, but on the form in which it is conducted. I agree with Miller that, even if no cultural or national identity were ever pure, there is a considerable difference between national cultures or identities that evolve as a result of open processes of dialogue and discussion (in which all citizens are seen as potential participants, also as members of cultural groups), and those that are imposed authoritatively through indoctrination, repression or political demagogy. Put differently: it is one thing to encourage or promote a belief and a very different one to impose it by force. In this sense, as Anderson puts it, nations differ from each other “not by their falsity/genuineness, but by the style in which they are imagined,” and this can be applied to any other form of cultural production and reproduction. Unless we maintain that cultures have a value in themselves, which individuals should contribute to preserve (and this is an argument which has been put aside so far in this book), what appears as morally wrong is not cultural assimilation in itself, but forceful assimilation. Yet force does not necessarily mean outright coercion: the realisation of freedom goes beyond the dichotomy between positive and negative freedom and implies, above all, the duty to prevent domination of some groups over others.

In the case of cultural minorities, domination can occur even without direct intrusion, as explained above. Here, preventing the tyranny of the majority may require the recognition of group rights, and not merely abstention and non-interference.

It is worth emphasising that this argument is not based upon an ascription of value to the survival of a culture as such, although this is often invoked by minority cultures themselves; rather, it is grounded on the individual interests in belonging to and maintaining their own cultures. Thus, when we say that this or that culture no longer exists, what we are really saying is that there are no more speakers of a certain language, nor people whose existence revolves around certain social conventions, traditions or ways of life associated to that culture. This does not imply that a culture disappears if a number of its specific elements change: conventions can be transformed, habits changed, and thus the culture evolves towards new forms of
expression. All cultures are in fact subject to a process of continuous transformation; none is static. The same we could say of people. The point is that a spontaneous transformation seems different from an imposed one. Most of us evolve throughout our lives, reviewing and modifying beliefs, customs and ways of life. But we do not cease being ourselves only for this reason. In the same way that we, as individuals, have an interest in steering this process autonomously, as members of a culture, we should also be free to change collectively the aspects we no longer consider attractive or justified. Therefore, what should matter is not the disappearance of a culture \textit{per se}, but the nature of the process that leads to its disappearance. It is one thing to guarantee the non-oppression of certain groups and another, very different one, to guarantee the indefinite preservation of cultures as they are in a given moment. Dworkin's thoughts on the issue of preservation of animal species can help to clarify the point: “few people believe the world would be worse if there had always been fewer species of birds,” what matters, “is not that there be any particular number of species but that a species that now exists not be extinguished by us.”  

Group rights of cultural minorities can thus be justified in order to compensate for this asymmetrical relationship between the majority and minority as regards access to the necessary resources to build and develop a cultural community, achieving, at least, some form of consequential neutrality. For the reasons explained above, the rejection of this instrument of accommodation of minorities implicitly entails upholding the morality of assimilation, thus denigrating the interests of those people for whom belonging to their own culture constitutes some form of value.  

However, group rights are not necessarily linked to consequential neutrality; they may also have a place in a framework of justificatory neutrality. Here the following question arises: if we accept that the state cannot help but intervene in the cultural sphere, should we then concede that neutrality, understood as an exclusion of ideals, is unachievable in this context? In my view, not necessarily. An assumption commonly accepted by those who invoke the principle of neutrality as an argument against group rights consists of equating state intervention in the cultural realm with the promotion of some conception of the good. But this assumption is wrong—otherwise, no state in the world could meet the conditions demanded by liberalism. Multicultural conflicts are not always appropriately portrayed as disputes concerning the nature of the good life, in which neither the majority nor the minority (or minorities) wish to give up their own conceptions. Certainly, this factor may be important for assessing the demands of non-liberal groups that tend to isolate themselves, as with certain religious sects, but nevertheless claim public assistance to preserve their particular traditions or ways of life. Yet this framework portrays inadequately the interests of many other cultural minorities in achieving a fair distribution of resources, or a certain degree of self-government, with the intention of preserving what Kymlicka calls their “cultural structures.” In other words, the fact that individuals belong to a culture does not necessarily imply a blind adherence to its predominant particular character at a given time. Cultural communities continue to exist even if its members decide to change those elements that make them different. Most demands of cultural minorities in liberal democratic states are not directed at obtaining public support in order to preserve the particular \textit{character} of their cultures, but rather to preserve the framework or \textit{structure} which allows them to take these decisions autonomously.
As Kymlicka and Taylor explain with regard to the “Quiet Revolution” in Quebec, even despite a fundamental internal transformation of the society, nobody doubted the existence of a French-Canadian cultural community. Admittedly, the dividing line between the structure and the character of a culture can be vague, but it is a difference that corresponds with our ordinary understanding of the world and ourselves. In the same way that I think of my identity as a person over time, I think of the identity of my culture, with all its internal pluralism and hybridism and regardless of the changes I have both witnessed and contributed to throughout my life. Its existence depends upon the existence of a group of individuals who identify with a certain language, habits, meanings and lifestyles—all of which, for them, make sense. Dead cultures only exist in museums because they no longer have any instantiation in the present lives of human communities.

If this reasoning is correct, then the type of dispute raised by multiculturalism is not necessarily that of a “clash of civilisations,” in Huntington’s term—that is, a clash between irreconcilable world views that cannot be translated into the language of social justice, equal opportunities, people’s dignity and freedom of choice. The problem is, as Kymlicka shows, that liberal theorists tend to assume that cultural conflict emerges from the existence of diverse conceptions of the good. That is why they focus upon the philosophical, religious and ethnic diversity of a single culture, without recognising the existence of multinational states with a plurality of cultures within the society. Yet disputes on language rights, on political autonomy or in the location where historical documents have to be preserved and accessed are not necessarily based on different conceptions of the good.

In conclusion, justificatory neutrality—the conception of neutrality as an exclusion of ideals—does not in itself rule out the legitimacy of group rights either. This is because not all cultural intervention implies the adoption of a policy concerning the common good; on the contrary, the promotion of the structure that allows for the individual exercise of freedom remains on the level of a conception of the right, and group rights can be a means for such promotion. Yet if we accept that neutrality is best understood as the exclusion of ideals in the reasons for political action, the case for group rights will be subject to restrictions. For instance, arguments based on the need to preserve the integrity of a culture, or a particular conception of the good that it represents, would be inadmissible. On the other hand, from the perspective of consequential neutrality, group rights can perform an important function in balancing state intervention in the realm of culture, which usually tends to favour dominant cultures. In that sense, far from jeopardising neutrality, group rights are central to realising it.

6. CONCLUSION

This chapter has examined the tolerance approach to cultural diversity that seeks to exclude interventions of the liberal state in the sphere of culture and thus regards group rights as problematic. As we have seen, there are several shortcomings in the formulation of neutrality that underlies this approach, and those lead to an inadequate view of the role of the state in multicultural settings. To start with, liberalism and nationalism have historically been closely linked. Furthermore, it is doubtful
whether the construction of democratic states would have succeeded without the resort to pre-political identifications, such as cultural and ethnic ties. The abstract dichotomy between civic nationalism and ethnic nationalism must thus be overcome as “all civic and democratic cultures are inevitably embedded into specific ethnonational histories.”

Yet at the same time, liberalism has underrated the importance of particular communities and identities and has been reluctant to attach any independent moral status to minorities’ claims within multiethnic or multinational states.

However, I have argued the orthodox liberal approach to this problem, based on the doctrine of religious tolerance, is incoherent. Modern liberal states must necessarily take political decisions that will affect the cultural sphere. The ideal of “benign neglect,” or cultural laissez faire, cannot be realised. For this reason, confining individual interests in cultural membership to the private sphere results in discrimination against minorities. A liberal state will thus recognise certain forms of group rights for minorities with the aim of including all the existing groups into the political community under conditions of equality. It is thus untenable to identify liberal states on the grounds of cultural neutrality interpreted as non-intervention; rather, liberal states would be those which promote cultural fairness, trying to implement means for measuring the impact of their policies on the cultural realm and, more specifically, on the position of cultural minorities. This is a more appropriate version of neutrality, one that implies moving beyond the common understanding of the ideal of universal citizenship as an equivalent to uniform legal status, since this interpretation has too often served to legitimise the dominance of certain groups over others. Consequently, the effective implementation of liberal principles—in particular, of equality—may require a type of constitutional arrangement that establishes different legal systems in different territories or a special personal status for members of certain groups. Still, as the last section has argued, this is not necessarily in conflict with justificatory neutrality rightly understood.

However, at the beginning of this chapter I have suggested that resort to the ideal of neutrality as an objection to minority rights only makes sense if one presumes, as the supporters of the tolerance approach do, the importance of individual interests related to cultural belonging. If we question this premise, the basis for a requirement of neutrality as regards culture becomes thin. And indeed, as already mentioned, some authors regard demands related to cultural identity or cultural membership as mere preferences or arbitrary wishes, which strictly speaking, cannot be granted through the recognition of rights. Likewise, from the perspective of liberal nationalism assimilationist policies can be justified because they constitute an essential instrument in making certain basic principles of justice effective. On this view, not all the policies concerning state interference in culture should be seen as illegitimate. It would obviously be the case with the more drastic measures of suppression or cultural assimilation generally considered as simple violations of individual rights—genocide, taking children away from their parents, prohibiting members of minorities from using their own languages in the private sphere, in newspapers or other publications, etc. It would not be as obvious with other activities aimed at promoting or encouraging people to assimilate into the majority culture, even though the encouragement is done in a passive way. Examples of this are the recognition of only one official language, one exclusive standardised education and a democratic system
without special representation for any group. As explained in the preceding chapter, liberal scholars such as Rawls do not see the state as neutral in relation to the pre-
conditions of fair social co-operation. If it turns out that one of these requirements is cultural homogeneity, why should this not become a legitimate aim?

All this leads us to a greater realisation of the need for additional arguments in favour of group rights for cultural minorities. According to what has been argued, these rights would only be justified if it were possible to contend that moral reasons demand state impartiality in the area of culture. Otherwise, the majority could still decide to accommodate the demands of minorities; but this would be an act of deference or courtesy, rather than a matter of justice. Yet I argue that it is an obligation of justice, and it is to the basis for this contention that I turn now.

NOTES

3 The reasons that might support this conclusion are rarely explored in detail. This may be due to the influence of the dominant notion of group rights (as rights held by the group) tacitly endorsed by many legal theorists, which has been criticised earlier in this book. Indeed, for some commentators (see Comanducci, 1994, pp. 45–46), the aim of group rights is the preservation of the particular character of a cultural identity, rather than the protection of certain interests of group members. This perspective suggests that the support of group rights entails the promotion of a particular conception of the good. But this conclusion is unnecessary, as this chapter tries to show.
4 This is an important assumption within the Rawlsian framework both in A Theory of Justice and in Political Liberalism.
5 Waldron (1993, pp. 11–12; 2000, p. 159).
6 While Rawls acknowledges that people with expensive tastes will probably be negatively affected by this criterion (at least as compared with those who have more modest life plans or styles), he does not regret this effect, nor he thinks of it as a valid objection to the idea of primary goods. Since secondary preferences are not left out of an individual's control, people must assume the responsibility of adapting or modifying them if required. See Rawls (1999, p. 369).
10 This is also the case of John Locke's Letter Concerning Toleration, although the political argument against interference with a person's beliefs or practices made by Locke has a content and structure that differs substantially from the arguments of Mill. It is also unclear whether this argument, which is very much based on the irrationality of persecution, succeeds in isolating the wrong involved in intolerance, as some commentators have criticised. For a debate on Locke's writings on tolerance, see Horton and Mendus (1991).
13 As it is well known, Mill's limit of harm to others plays out as a limit to this sphere of individual liberty. Although this key exception raises complex issues as to what types of activities or actions can be regarded as harmful, I will leave this problem aside for the moment. It is important to note, however, that the prevalence of freedom does not lead to a blind presumption in favour of state indifference within the liberal tradition. In the case of children, the insane and, in general, people whose faculties are impaired—temporarily or permanently—state intervention is generally accepted as valid in order to guarantee certain goods. A typical example is the obligation imposed on children to reach a certain level of education. The hope is that this imposition will allow them to develop the basic faculties and skills that are necessary to exercise their freedom appropriately as they enter adulthood. Certainly, other cases involving similar impositions are far more challenging, since the question of determining when there is an absence of the required capacities is a much contested one. Thus, Mill himself (1991)
argued that despotism was a legitimate form of government in some circumstances, particularly relating to “barbarian peoples.” Without going as far, Garzón Valdés (1993, pp. 371–372) also thinks that state paternalism is justified in cases of what he calls “basic incompetence,” when it is legitimate for a state to intervene to prevent people from making decisions that will lead to undermining or even eliminating their capacity to exercise freedom in a meaningful way. Yet, again, it is not at all apparent what “basic incompetence” means, as we will see in the discussion about the legitimacy of the claims of illiberal minorities in Chapter VI. In any event, this discussion points to the difficulties of delimiting the scope of neutrality, while assuming that this should be the aspiration in normal circumstances.

This is the position defended, among others, by Kukathas (1997, 2003).

On the connection between liberalism and pluralism through the notion of tolerance, see Lukes (1991, pp. 17–18).

Walzer (1997, 10, pp. 14–19) argues that this was the premise behind the version of tolerance that characterised the political arrangements in the old multinational empires of Persia or Rome.


The notion of “comprehensive doctrines” usually refers to religious or ethical conceptions that tend to be general; that is, that tend to provide a scheme of thought within which all recognised values and virtues are articulated. These are doctrines that apply to the most extensive set of subjects, including conceptions of what is good and valuable in human life as well as ideals of virtue and the like, thereby informing both the personal and the political. On this notion and why it cannot provide an acceptable basis for a political conception of justice, see Rawls (1999, pp. 424–425).


Ackerman (1980, p. 11).

Rawls (1999, p. 449). Nagel (1987, pp. 223–227) interprets most contemporary versions of liberalism in this sense—that is, as linked to the principle of tolerance and to state impartiality among the different conceptions of the good.


See Brubaker (1992, pp. 35–50).


Barry (2001, p. 21). Similarly, Sartory (2001, p. 84) says that a state that is difference sensitive, instead of difference-blind, divides its citizens.


The following remarks are mainly based on Kukathas’s recent book, The Liberal Archipelago, which builds on the main arguments he had developed in earlier works, especially in Kukathas (1992, 1997, 1998).

Kukathas (2003, p. 25).

Kukathas defends this account against others based on rationality, affection or self-interest. He also argues that the idea that the central source of human motivation is conscience is the best interpretation of Hume’s account of human nature. For a justification of these claims, see Kukathas (2003, Chapter 2).


See Kukathas (2003, p. 17).

Kukathas (1997, p. 94).


Kukathas (2003, p. 8, 22).

Kukathas (2003, p. 25).

Kukathas (2003, p. 25).

Galston (1995, p. 525) calls this position “reformation liberalism.”

Kukathas expressly argues that it is important to avoid the Rawlsian framework and not begin with the assumption of a close society; this assumption, he thinks, begs the question of how diverse peoples can live together in conditions of freedom. See Kukathas (2003, p. 6). As he puts it (2003, p. 8), social unity “is not nearly as important as has been intimated. On the contrary, the good society is not something confined by the boundaries needed to make it one.”

Kukathas (2003, p. 31).

See Kukathas (2003, p. 31, 32).
However, Kukathas questions the typical distinction between “comprehensive” and “political” liberalism which, he says, “cannot plausibly be one between moral and non-moral theories” (Kukathas, 2003, p. 16) since every political theory contain some basic moral assumptions. Instead, Kukathas argues that what distinguishes both versions of liberalism is that the second one has a minimalist aspiration. In other words, the distinction would rather be one of degree. See Kukathas (2003, pp. 16–17).

That is why, according to Kukathas (2003, p. 16, 36), Kymlicka’s theory offers a version of “comprehensive liberalism” because of its connection with autonomy. This contrast will become clear in the following chapter. However, in my opinion, it is unclear why defending liberty of conscience, as the basic value, should not be seen as another form of moral commitment that can also lead to exclusions.

Kukathas (2003, p. 5).

Kukathas (2003, p. 7). On the other hand, Kukathas thinks that the problem with the answer that insists on a conception of justice shared by diverse groups in a plural society is that this challenge can never be met, unless the conception of justice proposed is “stripped of too much of its substantive content” and “ceases to be a theory of justice at all.” See Kukathas (2003, p. 6).

Kukathas (2003, p. 100).


For this reason, a central feature of Galston theory is the emphasis on the need of some form of civic education that, while limited to accommodate a variety of beliefs and creeds, aims at preserving the core principles that the constitution contains, thus providing the ground for unity and other civic goals in a liberal pluralist state. In his view, beyond civil order, these principles include justice and the basics of human development that the state must enforce, if necessary through coercion. See Galston (2002, p. 10, 121). He also argues (1995, p. 528) that a pluralist state should be committed to a system of civic education that teaches tolerance.

By “expressive liberty,” Galston means (2002, p. 28) “absence of constraints, imposed by some individuals on others, that make it impossible (or significantly more difficult) for the affected individuals to live their lives in ways that express their deepest beliefs about what gives meaning or value to life.”


See Kukathas (2003, p. 29, 32).

Galston tries to identify the historical roots of the dispute between autonomy and diversity (as competing theoretical conceptions of liberalism). In his view, liberal autonomy is linked to the Enlightenment idea of “liberation through reason,” where reason is understood as superior to other sources of authority or reasons for action (such as tradition, etc.). Instead, Galston links liberal diversity to what he calls “the post-Reformation project,” that is “the effort to deal with the political consequences of religious differences in the wake of divisions within Christendom.” This second form of liberalism, he concludes, gives rise to the idea of managing diversity through tolerance. See Galston (2002, pp. 24–25).

Along these lines, Waldron (1995, p. 100) compares the right to culture with the right to religious freedom, suggesting that both issues should be similarly addressed.


As indicated in the preceding chapter, liberal egalitarians often see affirmative action, as well as other instruments of special treatment, as an exceptional and transitory regime.

Kymlicka (1995a, p. 3). As Kymlicka explains, in United States, the famous judgement of the Supreme Court in Brown v. Board of Education, which dismantled the system of racial segregation in schools, had a decisive influence on the expansion of this doctrine. The model of racial justice embedded in this judgement was invoked in other cases involving national minorities and indigenous peoples on the basis that establishing separate institutions for these groups was not distinct from racial segregation. On this point, see Kymlicka (1995a, pp. 58–59).

Kukathas (2003, p. 15).


This is not the view of scholars such as Kukathas, who take a sceptical stance on the issue of equality both between persons and between groups. Kukathas argues that the very complexity of the structure
of diversity poses strong limitations to the pursuit of equality. In his view, equality is unattainable without sacrificing diversity and, hence, “if diversity is to be accepted, then equality must be abandoned.” Kukathas (2003, p. 229). Once again, it is important to stress the peculiarity that the question of justice is not a central one in this theory, but it remains important for most proponents of the tolerance model.

This is, indeed, what Habermas (1994, p. 130) seems to maintain by arguing that: “The constitutional state can make this hermeneutic achievement of the cultural reproduction of life-worlds possible, but it cannot guarantee it. For to guarantee survival would necessarily rob the members of the very freedom to say yes or no.” This reasoning leads him to be sceptical of the notion of collective rights, even if he accepts the legitimacy of the demands for recognition made by cultural minorities. Galston (2002, p. 29, 56); Kukathas (2003, pp. 24–25; p. 93) It is worth to remind that, in the case of Kukathas, this conclusion derives from the defence of liberty of conscience, rather than from an appreciation for diversity. Also, Kukathas insists that his theory represents a “political” liberalism that does not rely on a shared conception of social justice.


Kukathas (2003, p. 93, 96).


See Galston (2002, pp. 122–123). Similarly, Brian Barry argues that freedom of association is a fundamental right, but he clearly states that a legitimate concern of public institutions is to ensure that members of associations have “real exit rights,” which means that “excessive costs” should be reduced. See Barry (2001, pp. 148–151). Aguilar Rivera’s position on this point is different. On the one hand, alongside Kukathas and Galston, he emphasises the relevance of the notion of tolerance in this debate; yet, on the other hand, he supports the idea that the individual rights of the members of cultural groups should be strictly protected, which means that tolerance should also be enforced within the group. See Aguilar Rivera (2000, p. 240, pp. 243–246).


Kukathas (1997, p. 78, 99). As will become apparent in the following chapters, Kymlicka’s theory poses several limits to the sort of groups that can legitimately claim minority rights.


For an account of the Soviet legacy and the demands of minority rights in Post-Soviet States, see Kolstø (2001). As Keating and McGarry (2001, p. 4) observe, the confidence expressed by neoliberal economists that markets will gradually weaken particularistic forms of identity bears a resemblance to old modernisation theories.

Hence, the categorisation is highly misleading as an analytic tool to explain the problems that beset multicultural societies in Eastern Europe. On the relevance of both types of nationalism to modern forms of patriotism, see Hobsbawm (1991, pp. 80–100).

See Margalit and Raz (1990); Tamir (1993); Taylor (1993, 1997); Miller (1995), Kymlicka (1995a). Since the publication of these central works in the mid-1990s, several edited books and symposia have been devoted to discussing nationalism from different perspectives. As far as its ethical justification is concerned, see McKim and McMahan (1997) and the special volume of the journal Ethical Theory and Moral Practice (1998, Vol. 1/2). For a more recent contribution to this literature, see Gans (2003).

Kymlicka has condensed in this label two recent streams of thought within contemporary liberal scholarship, which he sees as the focus of an emerging consensus among political theorists: liberal nationalism and liberal multiculturalism. “Liberal nationalists” assert that it is a legitimate function of the state to protect and promote national cultures and languages existing within its borders. This form of nationalism is defined by a set of constraints to which I will refer later. “Liberal multiculturalism” accepts that other non-national or non-cultural groups such as refugees, immigrants or gays have a legitimate claim to an explicit accommodation, recognition and representation of their identities within the institutions of the larger society (Kymlicka, 2001a, pp. 37–42).
See, on these premises, Tamir (1993, p. 121).

Tamir (1993, p. 121).


Kymlicka (1995a, p. 76; 1997a, p. 28).

According to Tamir (1993, pp. 69–73), at the heart of this right there is often a cultural rather than a political claim and, therefore, it has to be distinguished from the right of individual autonomy and participation in democratic and free elections. Similarly, Margalit and Raz (1990, pp. 455–456); against this view, see De-Shalit (1996).

According to Tamir (1993, pp. 69–73), at the heart of this right there is often a cultural rather than a political claim and, therefore, it has to be distinguished from the right of individual autonomy and participation in democratic and free elections. Similarly, Margalit and Raz (1990, pp. 455–456); against this view, see De-Shalit (1996).

According to Tamir (1993, pp. 69–73), at the heart of this right there is often a cultural rather than a political claim and, therefore, it has to be distinguished from the right of individual autonomy and participation in democratic and free elections. Similarly, Margalit and Raz (1990, pp. 455–456); against this view, see De-Shalit (1996).

According to Tamir (1993, pp. 69–73), at the heart of this right there is often a cultural rather than a political claim and, therefore, it has to be distinguished from the right of individual autonomy and participation in democratic and free elections. Similarly, Margalit and Raz (1990, pp. 455–456); against this view, see De-Shalit (1996).

According to Tamir (1993, pp. 69–73), at the heart of this right there is often a cultural rather than a political claim and, therefore, it has to be distinguished from the right of individual autonomy and participation in democratic and free elections. Similarly, Margalit and Raz (1990, pp. 455–456); against this view, see De-Shalit (1996).
adopted in order to promote linguistic and cultural assimilation. Moreover, from 1807, the government promoted the settlement of white Anglo-Americans in the newly acquired territory. By 1840 the use of French had begun to decline as Francophones were reduced to less than half of the population and they progressively used English to avoid being marginalised. When in 1912 Louisiana joined the Union, the Congress insisted that all laws and official acts were published only in English and that the French Civil Code was replaced by the common law. On this process, see also Perea (1995, pp. 978–981).

Yet, as is well known, Puerto Rico is among the exceptional cases where highly coercive assimilationist policies failed. For an excellent account of the colonialist policies adopted, the legal ideology behind the expansionist drive, and the judicial and social legacy of this process, see Rivera Ramos (2001). For a focus on linguistic policies, see Alvarez González (2001).

For instance, after the war with Mexico in 1848 massive emigration was officially promoted to the new regions conquered, together with policies aimed at removing Hispanic traits from the public realm. The admission of Hawaii into the Federation was postponed until the influence of the Anglophones was indisputable. The Federal Act of 1910 that gave the status of state to Arizona and New Mexico was particularly explicit: it required all public schools to operate in English. Additionally, officials and legislators were required to have enough knowledge of English in order to speak, write, read and understand this language. The German presence in Pennsylvania was also a source of concern for Benjamin Franklin who, alarmed to see the proliferation of newspapers, schools and signs in German, is reported to have asked “why should Pennsylvania, founded by the English, become a Colony of Aliens, who will shortly be so numerous as to Germanise us instead of our Anglifying them, and will never adopt our Language and Customs, any more than they acquire our Complexion,” quoted in Crawford (1992, p. 37). For a detailed account of this and other similar measures of cultural and institutional suppression adopted in other states, see also Crawford (1992).


For a comparative analysis of these models of incorporation, Schain (1999). On the plausibility of the common distinction between the republican—French—and democratic—American—models of integration, see also Fassin (1999).

According to the report prepared by Abbot Gregoire for the Revolutionary Convention, 12 million people (more than half of the population at that time) could not speak French and 3 million who spoke it did so without fluency. Despite this, in July of 1794, a Law imposed the use of French in all the territory and banned dialects. For an account of linguistic assimilation policies in France from the time of the Revolution, see Sadat Wexler (1996).


May (2003, p. 128).


For an account of the period of Muslim domination in Spain as an age of multicultural coexistence and tolerance, see Paris (1995).

Tamir (1993, pp. 63–64).

Youcenar (1974, p. 43).

Arendt (1973, p. 11).

Mill (1991, p. 429). Mill reached this conclusion after examining historical examples of multinational empires, such as that of the Austro-Hungarian Empire, where the government either had favoured one particular nation to the detriment of the other (or others), or tried to manipulate people in a more subtle form in order to ensure its own absolutism.

Kymlicka (1995a, pp. 49–74).


See Margalit and Raz (1990, pp. 447–452); Kymlicka and Straehle (1999, pp. 70–72).


Kymlicka and Straehle (1999, p. 70).

Kymlicka (2001a, p. 213).


Even Rawls invokes mutual trust as a necessary requirement for social co-operation. Moreover, he contends that steps taken by a constitutional regime to foster the virtue of mutual trust do not necessarily involve a perfectionist hint; rather, the state is only “taking reasonable measures to strengthen the forms of thought and feeling that sustain fair social cooperation between its citizens regarded as free and equal.” Rawls (1999, p. 461). So at least certain forms of nation-building—those directed at strengthening those “forms of feeling” that contribute to social co-operation—could be regarded as legitimate since, according to Rawls (1999, p. 460), justice as fairness includes an account of social co-operation as a central political virtue.

Miller (1995, pp. 70–73, 83–85). In a more recent paper, Miller (2004, pp. 13–30) discusses the thesis that multiculturalism is a threat for social justice because diverse cultural groups are generally unable to reach an agreement on what justice requires. This and other works that discuss extensively the potential tension between cultural diversity and economic solidarity and distributive justice can be found in Van Parijs (2004b).


Thus, Mill wrote (1991, p. 431): “Nobody can suppose that it is not more beneficial to a Breton, or a Basque of French Navarre, to be brought into the current of the ideas and feelings of a highly civilised and cultivated people—to be a member of the French nationality, admitted in equal terms to all the privileges of French citizenship, sharing the advantages of French protection, and the dignity and prestige of French power—than to sulk on his own rocks, the half-savage relic of past times, revolving in his own little mental orbit, without participation or interest in the general movement of the world. The same remark applies to the Welshman, or to the Scottish Highlander, as members of the British nation.”

Villoro (2000, p. 171).

According to Kymlicka, a “nation” is “a historical community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language and culture.” Both national minorities and indigenous peoples can be included under this definition (Kymlicka, 1995a, p. 11).


Guibernau (1996, pp. 117–122). However, this is a contested generalisation. In contrast to this view, Walzer (1995, p. 141) explains that, in the old multinational empires, the elites of conquered nations were the ones that tried to assimilate more rapidly: they children were educated in the language of their conquerors and soon started to regard their own traditional culture and language as primitive and inferior. Ordinary citizens were often the ones that fought to maintain their ethnic and national loyalties.


Crawford explains that a Mexican minister used the expression “foreigners in one’s own country” after their defeat in 1848. Nicholas Trist, appointed as the head of the peace delegation sent by the United States, reported that apart from giving up their territory, Mexico’s main concern was the conditions that the approximately 75,000 inhabitants of the transferred territories would face. As a result, the Treaty of Guadalupe Hidalgo established certain guarantees for the new Spanish-speaking American citizens comparable to those that the French had previously achieved in Louisiana. However, Mexicans rarely enjoyed linguistic rights, much less a special political status, and the issue disappeared from the agenda once the Anglo-Americans became the majority in the territory. This “tyranny of the majority,” in Crawford’s terms, was consummated in the Constitutional Convention of California in 1978–79 to which, from among the 153 delegates, no representative from...
the Spanish-speaking minority of Mexican origin was appointed. In addition to abolishing the requirement to translate laws into Spanish, the convention approved a new regulation, which established that all the laws and official documents of the State of California, as well as judicial proceedings would be published and conducted in the English language. Thus, California became one of the first states to have a constitutional provision concerning official language. Needless to say, as in many other cases, certain stereotypes and prejudices linked to the “primitivism” of “hispanos” significantly contributed to justifying such policies. See Crawford (1992, pp. 63–89) and Perea (1995, pp. 985–986) for further details.

This is a relatively underreported case in the literature, partly because of the common assumption that spontaneous mixing and the “melting-pot” are the forms of inclusion at work here. So let us report these events briefly: In March 1998, the House of Representatives of the United States approved—with a vote of 209 for and 208 against—a proposed law that would allow Puerto Rico to hold a referendum over its political status. Since 1952, Puerto Rico has held the status of “Estado libre asociado” and so the referendum was designed to ask citizens whether they would wish to have independence or prefer to maintain the links with the United States under their current status. During the debates in the American Congress it became clear that the main resistance to the referendum did not stem from fear that Puerto Ricans might vote in favour of independence, but rather from the possibility that a political entity composed of 3.8 million Spanish-speaking citizens (only 25% speak English) might choose full integration in the United States. Thus, some representatives tried to require, as a precondition for allowing this latter option, that English be declared the official language of the United States. In this way, the political integration of Puerto Rico as the fifty-first state of the Union would involve the linguistic assimilation of its population. While the Congress rejected this proposal on the grounds that the Constitution lacks an official language clause, linguistic assimilation was strongly recommended to the Puerto Ricans. Although the proposal was, in the end, fruitless (since the Senate refused to consider it) the option of becoming a fully integrated state was rejected in a referendum that was later held at the initiative of the Puerto Rico government. On Puerto Rican movement for independence and American federalism, see Thornburgh (2001).

It might be important to recall that the predominance of the Spanish language in Puerto Rico is almost absolute, even more widespread than, for instance, Catalan is in Catalonia or French in Quebec. While both Spanish and English are official languages in Puerto Rico, the society is mainly monolingual and, according to recent polls, only 25% of the population state that their English is “good.” See on the political and legal status of Puerto Rico and the relevance of the linguistic dimension, Álvarez González (2001).

As an American senator explicitly admitted in the early 1990s, the reluctance of the Congress to admit a plebiscite in Puerto Rico “is mainly due to the question of whether Puerto Rican should have the choice to decide on their nationality while still keeping Spanish as the official language.” Quoted in Álvarez González (2001, p. 281).


May (2003, pp. 126–127). Diachronic analyses of language rights, which provide a historical account of national language formation, are therefore important; in May’s words (2003, p. 128), precisely because the “establishment of so-called national languages was inevitably an arbitrary and artificial process, driven by the politics of state making, is also worthy of critical historical interrogation.”

For a volume that offers a detailed discussion of these problems, see Kymlicka and Patten (2003). The challenge of language policies and language rights for liberal values such as freedom of choice or political participation is nowadays widely acknowledged. For an account of some of these tensions, see Boran (2003b). For a liberal democratic approach to the question of linguistic justice, see Lutfin and Reich (2003).

Réaume (2000, p. 251).

Réaume (2000, p. 251).


France, for instance, employed this strategy during the post-revolutionary period: French territory was divided in 83 “departments,” partly with the purpose of subdividing the historical regions settled by Basques, Bretons and Corsicans.

On this and other mechanisms used to undermine the interests of minority communities, Kymlicka (2001a, pp. 73–82).
Certainly, the classical arguments invoked to justify American federalism had nothing to do with the need to guarantee distinct national cultures. Madison and Hamilton saw in this political arrangement both a way to prevent the degeneration of democracy into tyranny and a means of decentralisation of political power that would bring the centres of government closer to citizens, thereby facilitating the experimentation of social, economic and political reforms (Howard, 1996). Taking into account the different aims that might be eventually achieved through federal arrangements, Kymlicka (2001a, pp. 92–93; 2001b, pp. 29–31) distinguishes between “territorial federalism” (i.e., Germany, United States) and “multinational federalism” (i.e., Canada, Spain). Yet the adoption of federal arrangements is not necessarily synonymous with the recognition of minority rights to self-government, since the boundaries of the federal units could be drawn so as to the disempowerment of minority nationalism. On the adequacy of federalism to accommodate national minorities, see also Requejo (1999); for a philosophical account of federalism, see Norman (1994).

Typically, federal agreements allow a minority to become a majority in a territorial sub-unit within which it exercises a number of powers. By and large, this has been a constructive solution in the states mentioned, although it has not altogether removed the issue of secession from the agenda of some nationalist political parties. However, when explicit efforts have been made to accommodate the aspirations of national minorities, the option of secession usually loses popular support. For a classical study on the morality of secession, see Buchanan (1991); for a critical account of different normative theories of secession and their institutional implications, Norman (1998).

The regulations grant different levels of public use of the following languages in the regions where there is a substantial minority that speaks them: Albanian, Catalan, French-Provençal, Friulian, German, Greek, Croatian, Ladin, Occitan, Sardinian and Slovene. Before the implementation of the Law 482/99 recognising these languages, only German, Slovene and French-Provençal minorities were especially protected.

The Treaty on the European Union transferred to the EU institutions various responsibilities in the area of culture and cultural policy. Article 128 explicitly states that “[t]he Community shall contribute to the flowering of cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.” Article 22 of the Union’s Charter on Fundamental Rights also provides that “The Union shall respect cultural, religious and linguistic diversity.” In addition, the Commission, along with a coalition of regionalist allies, has fostered the Committee of Regions, with the same status as the Economic and Social Committee. It consists of a hybrid amalgam of representatives, from regional autonomies in Spain and Belgium, the German Länder, French departments and English counties. It is also important to recall that when the EEC was established in 1958, a decision was made that all the main languages of the member states would be represented and used in the work and political interactions of the common institutions. Today, the EU is not committed to a common language but to the protection of linguistic diversity. In addition, it supports the European Bureau of Lesser Used Languages (EBLUL), which is an independent NGO funded by the EU which represents almost 40 million citizens who speak an autochthonous language other than the main official languages. As a result, the resources of many regional languages have been substantially strengthened. See on these policies, Laitin (2001, p. 99).


For this reason, the theory of Kukathas is mostly compatible with a libertarian view that does not take as its main concern the question of social justice.

Let me remind, however, that Kukathas’ theory does not aim at resolving these questions (which are our main concern here) since, as explained, he is mainly interested in the problem of authority.

May (2003, p. 135).

Laitin and Reich (2003, p. 83).

Barry thinks that what he calls “the strategy of privatisation,” or the “depolitisation of difference” as the model of citizenship developed as a response to the wars of religion not only can work out for coping with cultural diversity today but it is the only position compatible with liberal egalitarianism. Yet Barry’s views on exit rights and neutrality are far from those defended by Kukathas. See Barry (2001, especially Chapter 2).

Barry (2001, pp. 106–107). Nevertheless, Barry at least acknowledges that the state cannot take a neutral stance concerning language, although he asserts his preference for struggling against economic inequality rather than for linguistic justice.
And also this general argument confuses cause and effect, as May notes referring to the case of Hispanic mobility in the U.S. and the predominance of English (May, 2003, p. 136). It is clear that English is the predominant language and that a lack of knowledge will limit the opportunities of those who do not speak it; yet this argument overlooks the fact that this occurs because there is a general political preference (historically and in the present) for asserting that English is a language key for social mobility, instead of a preference for attaching value to bilingual workers.

For a clear adoption of this stance, see Pogge (2003).

May (2003, p. 132).


The same argument could be used to criticise the right to exit as the solution for individual dissidents within illiberal communities. This issue will be taken up in Chapter VI.


Although as explained, there are thinner and more robust ways of understanding what the right to exit means. Compare Kukathas (2003, p. 96, pp. 103–106) with Galston (2002, p. 123).


This argument presupposes the rejection of pluralism (or diversity) as a paramount liberal value, along the lines suggested by Galston (2002).

Rawls (1993, pp. 35–40).


Raz, (1986, p. 113).


Kymlicka (1989b, p. 884). In a similar vein, Susan Mendus refers to two conceptions of neutrality, which she terms “causal” and “of results.” See Mendus (1989, pp. 12–13).

This conception of neutrality does not need to rest on a sceptical epistemological view. Rawls, Nagel and other leading contemporary philosophers have put forward alternative versions for the basis of neutrality that make sense of the impersonal standpoint that is required in political arguments.

Raz criticises both Nozick and Dworkin on the grounds that the first confuses and the second overlooks the two conceptions of neutrality. On this point, see Raz (1986, pp. 115–117, p. 134).


See on this criticism, Raz (1986, pp. 124–130).

In this sense, see Kymlicka (1989b, pp. 884–886), who defends the view that the main exponents of the neutrality doctrine can be interpreted as favouring a conception of “justificatory neutrality.” In a similar vein, see Waldron (1993, p. 151).


In an article originally published in 1988, Rawls himself rejected the interpretation of his theory as an instance of “consequential neutrality,” assuming that “it is surely impossible for the basic structure of a just constitutional regime not to have effects and influence on which comprehensive doctrines endure and gain adherents over time, and it is futile to try to counteract these effects and influences.” Rawls (1999, p. 460). In fact, some of his predecessors, such as John Locke, also seem to adopt this view. Thus, concerning the sacrifice of animals for the sake of religious worship, Locke thought that this type of sacrifice could not be prohibited because the state ought to refrain from interfering in the beliefs of its citizens: “the magistrate’s power extends not to establishing of any articles of faith, or forms of worship, by the force of his laws” (Locke, 1991, p. 19); and, similarly, “[t]he part of the magistrate is only to care that the commonwealth receive no prejudice, and that there be no injury done to any man, either in life or state” (Locke, 1991, p. 36). Nonetheless, to the extent that social reasons, such as the safeguarding of public health, required stopping this activity, a legal ban would be justified, even if it affected some specific religious group. “In this case,” Locke writes (1991, p. 37) “the law is not made
about a religious, but a political matter: nor is the sacrifice, but the slaughter of calves thereby prohibited.”

As is well known, Rawls regards the principles of justice as “neutral” insofar as they have been chosen through a procedure designed to be blind to the place that people occupy in society, as well as to their religions, beliefs, lifestyles and conceptions of the good. To the extent that the state grants the maximum amount of resources and liberties to citizens, which will allow them to pursue their disparate ends, the neutrality requirement is satisfied. But, according to Raz, Rawls deviates from his purpose when he demands equal prospects to pursue conceptions of the good, since “that ability depends on the principle of equal liberty” (Raz, 1986, p. 117).

Nagel (1975, pp. 9–10). Nagel concludes that this theory of human motivation presupposes an individualism which is not neutral among all ethical visions.


Rawls (1971, pp. 214–215). A weakness in this approach is that the defence of neutrality already seems to presuppose an axiological commitment with this ideal. For this reason, Waldron criticises the position of liberal scholars who maintain that it is possible, and indeed desirable, to remain indifferent as to which of the different justifications of neutrality is more adequate. Waldron (1993, p. 152). For an analysis of the link between neutrality and scepticism, see Barry (1992, pp. 219–232).

This line of argument could still be pursued in a slightly different fashion to take account of those projects that seek to define a purely political or procedural conception of liberalism. This aim is often attributed to Rawls in Political Liberalism, where he concedes (see Rawls, 1993, xviii–xix) that some of the main ideas elucidated in his first book could lead to the oppression of reasonable dissent in a pluralistic society. This is also the motivation underlying some projects for reducing liberalism to a thinner, purely procedural, doctrine that would include only a commitment to the processes that ensure formal equality. In its more rigorous form, this view relegates the state’s agency to a mere instrument of co-ordination to ensure that all citizens have the opportunity to pursue their aims, whatever these are. A difficulty with this stance is that it remains unclear why a society where the majority agrees on the intrinsic value of certain communal goals would choose instead to be committed to a weaker political compromise. In my view, despite what some of his later writings might suggest, Rawls does not subscribe to this model. Instead, he (1999, 459) explicitly claims that “[j]ustice as fairness is not, without important qualifications, procedurally neutral. Clearly, its principles of justice are substantive and express far more than procedural values.”

Gray (2000).

Kukathas (2003, p. 29). And, in fact, scholars like Gray (2000), who adopt this stance, assume that, by doing it, they are rejecting the liberal doctrine altogether.


Rawls (1999, p. 458). The priority of the right over the good implies, on the one hand, that the aspiration to neutrality rests upon a certain base, constituted by the set of comprehensive acceptable moral or religious doctrines. On the other, it indicates that the basic institutions and public policies are not particularly designed with the specific aim of favouring certain comprehensive doctrines.

Related to this conception, perhaps the pre-eminent argument against perfectionism is that the capacity of individuals to decide for themselves should be prima facie trusted. This kind of trust underlies the representation of the parties in the original position. They are portrayed as rational beings possessing two moral powers whose development constitutes their highest interest: the capacity to act according to a sense of justice, and the capacity to form and pursue a conception of the good. See Rawls (1999, pp. 312–313, 331). This idea of the moral person, defined according to a capacity for self-determination, ultimately leads to the justification of state neutrality. This is not just because individuals are always in a better position to judge for themselves what their best interests are, nor because the state may also make mistakes, but mainly because it is presumed that individuals are capable of making these judgements for themselves. Indeed, persons are defined by this capacity.


Waldron (1993, p. 166) is right when he points out that the relevant question is not whether liberalism is committed to certain substantive values, but rather whether such a commitment is justified. In his view, the influence and moral power of liberalism stems, precisely, from the appeal of these substantive values.
A stronger accommodation of pluralism is, as I emphasised, a central goal of Rawls’ political liberalism. He aims to build a theory for political institutions that could be accepted in a society deeply divided along moral, religious and philosophical lines (see Rawls, 1993, p. xviii). Put differently, he envisages a theory that cannot be reasonably rejected from within each conception of the good. This is the central idea behind the notion of \textit{overlapping consensus}. This consensus, according to Rawls, has to be reached over a number of principles capable of standing on their own merits (freestanding). In the initial contractual strategy, these principles arise from the original position, while the current presentation of the theory seems to depend more on the idea of the “reflexive equilibrium” and on the notion of “public reason.” Nevertheless, independently of how this change of strategy should be assessed—a matter that I shall not pursue here—Rawls’ predisposition to take account of pluralism is still a logical corollary of the basic value of individual freedom. His distinction between simple pluralism and reasonable pluralism, and the purpose of accommodating the \textit{reasonable} comprehensive doctrines within the theory of justice as equality, make sense in this light. See Rawls (1993, pp. 63–66).


Kymlicka (1995a, p. 113). As will be explained in the following chapter, Kymlicka has strongly emphasised the relevance of arguments of fairness and equality in this debate. Ultimately, he thinks that group-differentiated rights, such as territorial autonomy or language rights can be justified on these grounds.


Anderson (1983, p. 6).

Petit (1997); also Young (1990, 2000).

One could argue that if minority nations, when faced with the state’s failure to recognise their demands, sometimes adopt fundamentalist attitudes as to the need of preserving the character of their culture (even to the extent of reinventing traditions and reviving languages that are not used any more), this is because they are often forced by mainstream society to prove almost ontologically their “existence” as a “nation,” a challenge that the majority nation does not face, insofar as it is internationally recognised as the “owner” of the state.

Dworkin (1993, p. 75).

In this sense, the present liberal defence of nationalism is characterised by the rejection of the ethnocentric version of this ideology. What they advocate is not the ethnic superiority of “great nations,” nor the right to political self-determination of some nations only, but the equal respect for all nations. This characteristic comes from the universal structure of the rights accepted by liberals: if the feeling of identification with the community and the desire to have our own political institutions is important for the members of my nation, we should assume that it is equally important for the members of other nations. See Tamir (1993, p. 9).

Chapter VI examines this controversy in more detail.

On this distinction, which is at the heart of Kymlicka’s conception of culture, see Kymlicka (1989a, pp. 166–167; 1995a, pp. 87–88, 104–105, 184–185). As will be explained in the next chapter, Kymlicka justifies the rights of minority cultures to the extent that their object is to safeguard the structure of a culture, and not to impose restrictions on its members that are meant to preserve its particular idiosyncrasies.

See supra note 178.

Huntington (1997).


Kymlicka (1999a, p. 124, 128).