

## The Liberty to Culture: A Substantial Liberty Approach

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*A Draft.*

*If a person possesses any tolerable amount of common sense and experience, his own mode of laying out his existence is the best, not because it is the best in itself, but because it is his own mode<sup>1</sup>*

*Freedom... defeats itself if it is unlimited. Unlimited freedom means that a strong man is free to bully one who is weak and to rob him of his freedom. This is why we demand that the state should limit freedom to a certain extent, so that everyone's freedom is protected by law<sup>2</sup>*

Individuals around the world argue that their ability to continue to affiliate with the culture in which they grew up is harmed due to global occurrences. In response some political theories have been suggested, aiming to address these arguments and sentiments. These theories sometimes employ a strong version of collective rights<sup>3</sup>, or attach special roles to cultures as 'contexts of choice'<sup>4</sup>.

The approach of this article is different. I shall argue that cultural affiliation is an important part of individual liberty. A person may choose whether to use his mother tongue on his shop sign or in his business as a whole, whether to send his children to a school teaching in his mother tongue, whether to keep his culture's days of rest, and a variety of other cultural conducts. I will argue that this liberty is under threat due to global occurrences that make the choice to continue to affiliate with small cultures<sup>5</sup>, an unprofitable choice from an economic point of view. I shall argue that protecting the liberty to culture is of significant importance, and therefore liberal states have a duty to protect cultural liberty. This can be done by using a variety of policies, through an ascending level of state involvement, from non intervention to allocation of resources. These policies may include introducing incentives for people who wish to choose their local culture. I shall argue, following certain (left) liberal ideas about freedom, that a cultural laissez faire policy will result in the deprivation of liberty, similar to the way that an economic laissez faire policy has usually resulted in the deprivation of liberty.

The policies suggested should provide a reasonable person with enough resources to enable him<sup>6</sup> to keep his cultural liberty. It needs to be emphasized however, that the

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<sup>1</sup> J. S. Mill, *On Liberty* in: *Mill, Texts, Commentaries* (ed), A. Ryan, (London: Norton and Company, 1997), chapter 3.

<sup>2</sup> Popper, K. *The Open Society and its Enemies* (New York: Harper and Row, 1962) (Vol. 2), pp: 124-125.

<sup>3</sup> Van Dyke, Vernon, "Justice as Fairness: For Groups?", *APSR*, Vol. 69. No. 2. (Jun. 1975), pp: 607-614.

<sup>4</sup> Kymlicka, Will, *Liberalism Community and Culture*, (Oxford: Clarendon Press, 1989), pp: 165-166.

<sup>5</sup> 'Small cultures' refers to the number of members. It can relate to both minority cultures within states, and to a small culture that constitutes the majority in a given state. In this context, 'small' is simply a code word for not economically viable, that has a probable correlation with size, but not necessarily.

<sup>6</sup> Throughout the article I shall use 'him' or 'his' in order to avoid complications, but the references apply to both genders.

object of these policies is to protect individual liberty, and therefore violations of individual liberty, above a certain limit, cannot be justified by the suggested approach.

The *liberty to culture* idea consists of several parts: **First** I shall argue that an individual's affiliation to his culture (as distinct from cultural identity) should be understood as a liberty. That is, we can sensibly speak about the ability to choose one's cultural affiliation. However, the choice to continue to affiliate with small cultures is under threat due to global occurrences. **Second**, I shall argue that distributing resources that will protect the ability to make proper use of the liberty to culture is justified due to the importance of the choice involved. The justification of this argument stems from considerations of liberty, equality and respect. **Third**, I shall discuss how, from a liberal perspective, the state may protect individual liberties, and in particular the liberty to culture. A special emphasis will be given to allocation of public goods for this cause. **Lastly**, in section four I will conclude with the possible limits of the argument.

The argument presented in this article is the opposite of some well-known liberal arguments for state support of culture, because culture becomes **the outcome** of choice, rather than its necessary background condition. I hope to show that although this is the case, the allocation of resources (contrary to the luck egalitarian position) is nonetheless justified.

### 1. Cultural Affiliation as a Liberty

I shall divide this section into three sub - sections: first I shall explain in what way we may understand an individual's affiliation to his culture as a liberty. Second, I shall explain what cultural choice entails, and how it *strengthens* cultural commitment. Lastly, I ask if the liberty to culture is under threat.

1.a. *Cultural Affiliation as a liberty*. In this article I argue that we may understand an individual's affiliation to his culture as a liberty. Since this statement is not trivial, I begin by showing why I think that this is the case. We do not claim that we have the liberty to turn into hobbits, or to jump over the moon. In order to claim that X is a liberty, the individual has to have at least potential control over his conduct at a specific sphere of activity (Y). For example, I have the liberty to walk or not to walk down the street (aside from the formal legislation that may exist with regard to walking; see section 3). In short, the individual has a capacity, *qua individual*, to choose within sphere Y. Therefore, we may claim that his conduct within this sphere is, at least potentially, a part of his liberty. However, can we relate to an individual's affiliation to his culture as a liberty?

In order to claim that the answer to this question is *yes*, we need to argue that a person can choose - or at least has the potential to choose - his cultural affiliation.

Cultural affiliation is connected to one similar but distinctive term: cultural identity. Before showing the relationship between these two terms, I shall offer a working definition of "*encompassing culture*"; it is the social phenomenon in which a group of people share common norms, language, history, a possible connection to a specific territory and a common awareness of the community members' similar affiliation to these characteristics.<sup>7</sup> When discussing culture throughout this article, I shall relate it to encompassing cultures (E.C.)<sup>8</sup>.

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<sup>7</sup> Throughout the article, any reference to a culture should bear the significance of an encompassing culture. These common characteristics draw upon two sources: Raz, Joseph, and Margalit, Avishai, "National Self

*Cultural identity* is the part of individual identity that relates to these characteristics. *Cultural affiliation* is the conduct that aims to contribute, promote, or give effect to these characteristics. Such conduct may include speaking the culture's language, knowing its history, eating its traditional food, etc.

Can an individual choose his own identity? Some current researchers claim that the answer to this question is yes<sup>9</sup>. However, I think that a less radical approach is more suitable, since I do not claim that individual identity can be (re) created from scratch. A more reasonable approach has been suggested by the philosopher D. Gauthier: "...What matters is that their preferences... and their capacities are not fixed by their socialization, which is not a process by which persons are hard wired, but rather, at least in part, a process for the development of soft wired persons, who have the capacity to change the manner in which they are constituted.<sup>10</sup> ...What makes a being autonomous is his capacity to alter given preferences... not a capacity to produce preferences with no prior basis."<sup>11</sup>

In other words, the cultural identity of persons is a matter of at least partial choice, although this choice is: 1) not without cost, as the influences of society and the process of socialization cannot be easily reversed (especially with regard to language - see section 2); and 2) the self cannot be made or remade afresh, as a person is not an 'empty' individual that fills himself when he wishes with a ready made identity like a new suit. A more adequate image would be a person that decides to change some part of his identity, although the change itself may be slow and the process involved long and tiresome. Even then, some parts may remain intact.

However, it needs to be emphasized that I am discussing the liberty to **cultural affiliation**. By Cultural affiliation I mean *the conduct*, which implies that the individual's continuous connection to his culture is an evident matter of choice. A person may or may not continue to use his native language<sup>12</sup>, eat a traditional diet, celebrate holidays, enjoy cultural art, read the great books of his tradition, enlist his children to schools that teach in his mother tongue etc. Of course in some places the state may force its citizens to behave in a certain (cultural) way, but in principle, people have the potential to choose (or choose not) to continue to affiliate with – or conduct themselves in the manners - of a given culture.<sup>13</sup>

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Determination", *Journal of Philosophy*, Vol. 87, No. 9, (Sep. 1990), pp: 439-461, and Kymlicka, Will. *Multicultural Citizenship. A Liberal Theory of Minority Rights*. (Oxford: Clarendon Press, 1995), pp: 76-84.

<sup>8</sup> There are several reasons for choosing E.C as a comparator, see section 2.

<sup>9</sup> Giddens famously argued that: "In the settings of what I call 'high' or 'late' modernity – our present-day world – the self, like the broader institutional contexts in which it exists, has to be reflexively made. Yet this task has to be accomplished amid a puzzling diversity of opinions and possibilities".

Giddens, Anthony. *Modernity and Self Identity*. (Stanford, California: Stanford UP, 1991), p. 3.

<sup>10</sup> Gauthier, David, "The Liberal Individual", in *Communitarianism and Individualism*, (eds), Avineri S, and de-Shalit, A. (Oxford: Oxford University Press, 1992), pp: 151-164, at 158.

<sup>11</sup> *Ibid*, p. 157.

<sup>12</sup> Especially in cases of *diglossia*, that is, in cases in which one language is less prestigious, and used mainly in inner community contexts, while a second language is used in more formal and prestigious contexts.

<sup>13</sup> This line of argument, that connects liberty to cultural affiliation, becomes more reasonable due to the influences of globalization. But the line of thought that connects liberty to cultural groups has an interesting tradition in and of itself. In this regard see: E. Renan, "What is a Nation?", in *Becoming National*, (eds) G.

The connections between cultural identity and cultural affiliation are complex, but at least one point is clear: given complete indifference by a given individual to his culture, the lack of any cultural based conduct (connected to one's native culture) will have some influence upon his cultural identity. The effect may vary due to different circumstances. For example, if such a person immigrates, his former identity will probably become less and less evident<sup>14</sup>.

1.b. *What does cultural choice entail, and how does it strengthen cultural commitment?* Referring to culture as a product of choice may lead to several questions: how is the choice made? Does the act of choosing undermine the importance of culture?

I propose that there are two important factors that explain my view with regard to culture: first, in the present global world, cultural choice is almost coerced upon members of small cultures – without a conscious effort, the default option will often be the global culture and not the local one.<sup>15</sup> Second, culture is made through individual choices. It is through the conduct of individuals that a culture is maintained and developed. If the members of some culture no longer see it as worth while to develop and maintain, they will gradually assimilate.

Since it may be argued that no one can build a new culture from scratch, how can I argue that culture is born out of individual choices? Is not culture a construct that exists beyond the life of a single person, both in aspects of time and creation?<sup>16</sup>

I think that the answer is *yes*; however, no single individual has to single handedly choose *all* aspects of a given culture. The choosing (or selection) is made simultaneously by the members of any culture. Parts of cultures are always in a state of change. In some cases, the changes are quite drastic. This kind of choosing is typical of national movements in their initial stage. However, cultural choice does not stop at later stages, especially due to the existence of external influences – it is a continuous phenomenon. According to the famous words of E. Renan: "A nation's existence is, if you will pardon the metaphor, a daily plebiscite, just as an individual's existence is a perpetual affirmation of life."<sup>17</sup> The same is true, I shall argue, for encompassing cultures.

Eley et al. (Oxford: Oxford UP, 1996), pp: 42-57, Cobban, Alfred. *The Nation State and National Self Determination*. (New York: Thomas and Crowell, 1970) pp: 107-108, Tamir, Yael. *Liberal Nationalism*. (Princeton: Princeton UP, 1993).

<sup>14</sup> This does not mean that a person will change his cultural identity - since the surrounding society may force him to acknowledge it. However, some freedom to choose one's identity remains nonetheless, despite conformity pressures. The issue of identities that are solely created by the surrounding society is complex, and beyond the scope of this article.

<sup>15</sup> This is a rather simplistic view of the matter, concisely put, I do not claim to an essentialist view of culture, nor do I disregard the importance of *glocalization*. Rather, I relate to choosing (for example) language and days of rest that are different from those of the culture one grew up in, so that even a dynamic, pluralistic view of a specific culture can not accommodate, so that it will not be possible to claim that the new choices are part of the same 'old' culture. I would suggest to treat this subject through an approach towards culture that follows Wittgenstein 'family resemblance' idea, see: Wittgenstein, L. *Philosophical Investigations*, (Oxford: Blackwell, 1953, Tr. by E. Anscombe), section 67.

<sup>16</sup> A relevant issue is the artificial, planned, aspects of culture. Do the theories of imagined communities, and modernization of nationalism undermine my argument? I think that the answer is no – the important factors are the choices and feelings of individuals at present and not the historical background. See in this regard: Wayne Norman, "National Autonomy", in *Practical Ethics*, (ed) H. LaFollette, (Oxford: Oxford UP, 2003), pp: 591-620.

<sup>17</sup> E. Renan, "What is a Nation?", in *Becoming National*, (eds) G. Eley et al. (Oxford: Oxford UP, 1996), pp: 42-57, at 53. This point is similar to the way Rawls explains his idea that persons may choose their ends

An important clarification concerns the nature of cultural choice: individuals do not choose cultures as if they were standing outside of a culture. Rather, they are already immersed in a particular culture. A person cannot be culture free: but he can choose to abandon parts of a culture in which he grew up, and to affiliate himself with another.

The understanding of culture as stemming from the choices made by many individuals does not mean it is insignificant; rather, its importance **grows** in the eyes of those who contribute to it, as it is nothing less than an extension of individual autonomy. Some may think that if a particular attribute is chosen by an individual rather than provided by his circumstances, it is of a lesser importance to him. I propose the opposite; it is what one decides that he wants and how he acts in order that it may be achieved that is of greater importance to the individual.

*l.c. Is the liberty to continue to affiliate with the culture in which one grew up under threat?*

Some liberals understand cultural affiliations as a potential threat. If a person wishes to adopt different customs than those of his surrounding society, liberals have traditionally suggested that this person should be protected from certain kinds of pressures from his community.<sup>18</sup> Given an intolerant society, this liberal stance makes sense. In many parts of the world this stance is surely justified.

I, however, wish to point to another perspective that is arguably becoming more and more relevant to the current situation of small cultures. Suppose person X wishes to *continue* his affiliation with his local culture - the threat to his autonomy does not stem from pressures from his own society to conform, but rather, X's efforts **to continue** his affiliation with his culture are becoming more difficult and costly due to external pressures. X's potential choice to continue his affiliation with his culture may involve costs and difficulties of several kinds. One such scenario, involves the issue of members of small cultures<sup>19</sup> choosing to continue to use their local language (and to choose their culture). This scenario will assist me in demonstrating that the liberty to perform cultural-based actions is becoming more difficult and costly due to several social processes, globalization being one of the central processes.

The scenario is simple, in any language related activity (and in other cases related to culture) joining popular cultures carries positive economic and status related results. **If a sufficient number of people join a given language or culture, the dynamic becomes more and more profitable, and the cost of refusal to join it increases<sup>20</sup>.**

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from (mostly) a given background of possibilities: "Thus in drawing up our plan of life we do not start de novo; we are not required to choose from countless possibilities without given structure or fixed contours." Rawls, *A Theory of Justice*, (Revised Edition, Oxford: Oxford UP, 1999) p. 494.

<sup>18</sup> See especially chapter 3 of *On Liberty* in: *Mill, Texts, Commentaries* (ed), A. Ryan, (London: Norton and Company, 1997) pp: 84-99. For a good example of a contemporary writer that defends individual autonomy see: Raz, Joseph, "Autonomy, Toleration, and the Harm Principle", in *Issues in Contemporary Legal Philosophy, The Influence of H.L.A. Hart*. (ed) Ruth Gavison. (Oxford: Clarendon Press, 1987), pp: 313-334.

<sup>19</sup> In the context of this article, I discuss both minorities within larger states and small cultural groups that constitute the majorities within given states (i.e. I relate both to cases such as the province of Quebec in Canada and cases such as Estonia or Israel).

<sup>20</sup> An interesting by product of this logic is that the number of people speaking a language as a second language (rather than those who speak it as their mother tongue) is the decisive factor.

The case of Hebrew in Israel, or any other language spoken by a small number of people, is a living example to this simple but powerful logic<sup>21</sup>.

If we shall apply the same logic to the numerous spheres of behaviour connected to culture, such as the language used at schools, the publication of books, music and any other language related activity (especially, but not uniquely, in professions that involve international contacts), the risk to profitability from using Hebrew, or any other minority language, would become obvious. Consequently, the usage of the minority language would be under constant threat.

Two implications of this scenario are noteworthy: the undermining of the status of Hebrew (used here as an example of a minority language) in the public sphere in Israel, and the cost for an Israeli wishing to continue to use Hebrew. The cost of choosing Hebrew is not only financial, but involves social pressures as well. In order to conform to the fashionable 'English is cool' trend found in many shopping centers, movie theatres, and even new cities in Israel, indeed, many businesses in Israel choose names, signs and advertisements in English. If this scenario seems a bit exaggerated, allow me to quote from one of Israel's foremost writers, Amos Oz:

"Not far from here, in the heart of Israel... a new city is being built called: 'Airport City'. For this reason alone, governments in other countries would fall. For this reason alone, crowds would go on to the streets to protest... Just a few days ago I got a letter from an important mayor in Israel... the letter was written in English. I was furious. I sent back the letter without reading it... You might be amazed to hear such hawkish words from a moderate, a dovish man like myself. However, when it comes to the Hebrew language I feel that we are in grave danger of losing both the ground beneath our feet and the sky above our heads."<sup>22</sup>

This is of course just an illustration, but the difficulties of maintaining an affiliation to small cultures is a worldwide problem, and has been concisely explained by J. Raz: "When one thinks... of the right way to deal with cultural groups within our countries, one should always imagine what one would want to happen had the question affected not the Turks, let us say in the Netherlands... but the Dutch or the British in Europe."<sup>23</sup> This problem does not influence solely language - other components of culture are affected as well (days of rest for example<sup>24</sup>). Therefore, it seems that the issue of cultural liberty is **reversed**; the problem is not a reactionary culture forcing its norms and identity on individual members that cannot choose otherwise, **but**, a global world, that makes the potential wish of individuals to maintain their cultural affiliation more and more difficult.

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<sup>21</sup> For an empirical and historical examples see: Nettle, D. and Romiane, S. *Vanishing Voices* (Oxford: Oxford U.P. 2000). Using economic discourse, there is a strong economic incentive to defect from using local languages, indeed, even the mere fear that fellow citizens shall use English is sufficient to create the collective action dynamic. See: Olson, Mancur. *The Logic of Collective Action*. (Cambridge, Mass: Harvard UP, 1965).

<sup>22</sup> Judaism and State, *Essays and Studies (2), Israel: Dreams and Reality, A Dialogue, Rabbi Jonathan Sacks and Amos Oz*, May 24<sup>th</sup>, 2001. (Bar Ilan University, Ramat Gan) p. 18.

<sup>23</sup> Raz, Joseph, "Multiculturalism: A Liberal Perspective", in his *Ethics in the Public Domain*. (Oxford: Clarendon Press, 1996), pp: 170-191, at 175.

<sup>24</sup> See: Peter Jones, "Bearing the Consequence of Belief", in *Contemporary Political Philosophy* (eds) R. Goodin and P. Pettit, (London: Blackwell, 2006), pp: 607-620.

The threat to liberty, it seems, stems from external cultural and economic pressures upon individual members of small cultures.<sup>25</sup>

Some of the examples I presented may seem to invoke relatively unimportant parts of individual choice; however, a complete cultural *laissez faire* approach, that includes music, literature, language used on signs, days of rest, language used at schools, language used by significantly big businesses, etc, shall result in a deprivation of the ability to choose the local culture. In other words, although a *specific piece* of cultural policy (with regard to any one of the mentioned possibilities, and many others) may be seen as peripheral, lack of *any kind* of cultural regulations would amount to a deprivation of liberty and should be avoided.

It may be argued that as long as the state does not *forbid* the usage of minority languages, there is no violation of liberty involved. I would argue however, (and I shall return to this point in section 3) just the opposite: that situations in which persons are deprived of choice due to lack of resources constitute a deprivation of liberty<sup>26</sup>. In this context we may differentiate between two kinds of liberty:

1. 'Formal liberty': The constraints within a specific sphere of activity that enable or restrict personal behavior, beliefs, etc.
2. 'Substantial liberty': The ability to make proper use of the liberty within a specific sphere of activity. This ability usually requires resources.

Formal liberty is perhaps one of the trademarks of liberalism; simply put, it relates to the absence of external constraints upon the individual.<sup>27</sup> For example, in the above mentioned example, any Israeli is *free* to use Hebrew ('free' here means that there are no formal constraints that forbid the action).

However, I wish to propose the following step; most left liberal thinkers deny that formal liberties, *by themselves*, provide sufficient means in order to protect individual freedom. Without adequate resources, the individual will not be able to exercise his freedom.<sup>28</sup>

The debate between supporters of substantial liberty and formal liberty is wide spread,<sup>29</sup> and beyond the scope of this article. In the framework of this article I shall solely argue that the liberty to culture is important enough to justify holding governments of liberal

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<sup>25</sup> It needs to be emphasized that the value of individual liberty remains intact, however, the sociological circumstances have changed considerably, and the proper policies that are required in order to protect individual liberty have changed accordingly as well.

<sup>26</sup> In order to avoid misunderstandings it must be clarified that a person can almost always choose his culture, and so the question is whether the choices are reasonable. To be left solely with bad choices violates one's liberty *and* other values that are at the core of left liberal thought: such as respect. This point requires further elaboration that is beyond the scope of the present article. With regard to liberty deprivation see: Cohen, G. A. "Are Disadvantaged Workers who Take Hazardous Jobs Forced to Take Hazardous Jobs?" in his *History, Labour and Freedom*, (Oxford : Clarendon Press, 1988), pp : 239-255. With regard to the liberal 'ethos' see: Wolff, Jonathan, "Fairness, Respect, and the Egalitarian Ethos", *Philosophy and Public Affairs*, Vol. 27, No. 2 (Spring 1998), pp: 97-122.

<sup>27</sup> This is an example of the famous 'negative liberty,' see: Berlin, I, "Two Concepts of Liberty", in his *Four Essays on Liberty*, (Oxford: Oxford UP, 1969), pp: 118-173, at 122-131, T. Hobbes, *Leviathan*, (ed), M Oakeshott, (Norwalk, Connecticut: the Easton Press, 2005), chapter 21, pp: 136-145.

<sup>28</sup> To quote from Rawls: "Thus liberty and the worth of liberty are distinguished as follows: liberty is represented by the complete system of the liberties of equal citizenship, while the worth of liberty to persons and groups depends upon their capacity to advance their ends within the framework the system defines." Rawls, John, *A Theory of Justice*, p. 179.

<sup>29</sup> See the discussion in: Holmes, Stephen, and Sunstein, Cass. *The Cost of Rights, Why Liberty Depends on Taxes*. (Norton: New York, 1999).

states to be under a duty to protect cultural liberty, and that in *liberty* I shall mean *substantial liberty*. To the justification of this point I now turn.

## 2. Why is the Liberty to Culture Important?

The choice of culture is important. Although we can choose our cultural affiliation, I would argue that the state ought to protect the ability to continue to affiliate with the culture in which one grew up. This policy might require allocation of resources. Naturally, there is a need to explain why the liberty to culture is important, *and* why I stress the importance of the culture in which one grew up. If choice is the main value pursued in this article, why do I stress the choice to continue an affiliation to a culture in which one grew up? Why not *any* cultural affiliation (or conduct)?

A disclaimer is in place here: my argument does *not* imply that cultural choices unrelated to E.C. (encompassing cultures) should not gain any support from the state, only that the focus of this article is upon E.C.

There are several arguments that explain my view, I shall shortly mention them here, and I shall elaborate about them below. *First*, the answer may stem from sociological reasoning. Since many people react to an inability to continue to affiliate with the culture in which they grew up, a political theorist interested in real social relations has to take this fact into account when thinking about cultural liberties. *Second*, I shall argue that the choice of culture is an important part of one's autonomy. Since cultural affiliation to E.C. involves a wide variety of activities that is broader in scope than the activities associated with most other groups, protecting continued affiliation to E.C. is more important than protecting continued affiliation to other groups (and leaving all those choices to the whims of cultural markets in a cultural *laissez faire* will violate one's liberty). Therefore, inequality in the ability to continue to affiliate with the culture in which one grew up is a harm that calls for corrections. As mentioned above, my argument does *not* imply that cultural choices unrelated to E.C. should not gain support from the state, only that the focus of this article is upon E.C. *Third*, the alternative policies, (either cultural libertarianism or cultural luck egalitarianism) are not very attractive, especially as language is an important component of E.C. Since both maintaining the ability to choose one's mother tongue and disassociating from one's mother tongue are costly, a state that offers no policies intended to maintain the ability to continue to use one's language violates its citizens liberty *and* respect.

I shall elaborate about these points.

***Sociological reasoning:*** The problem today, as I mentioned above, is the difficulty to sustain an affiliation with the culture in which one grew up. As is expected, people react to this situation - the phenomenon of continued efforts of different groups to maintain their affiliation with their cultures is wide spread<sup>30</sup> - and most people cherish their known cultural surrounding more than that of other cultures<sup>31</sup>. The liberal insistence on choice should not regard people as empty vessels waiting for their first choice to be made, but

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<sup>30</sup> For a somewhat critical overview of this phenomenon see: Walzer, Michael, "The New Tribalism: Notes on a Difficult Problem", in *Theorizing Nationalism* (ed) R. Beiner, (New York: SUNY Press, 1999), pp: 205-219.

<sup>31</sup> As C. Larmore has claimed, it is almost impossible to derive a list of rights solely from an abstract theory of individual autonomy, and some historical knowledge about the importance individuals attach to specific liberties is necessary. See Larmore, Charles. *The Morals of Modernity*. (Cambridge: Cambridge UP, 1996), pp: 9-11.

should reasonably relate to the regular behavior of people. Indeed, Mill argued that popular opinions and behavior do not need protection, whereas different and extraordinary opinions do<sup>32</sup>. A liberty to join the majority, in other words, is no liberty at all, since no reasonable alternatives exist<sup>33</sup>. In short, being at liberty to continue to affiliate with a small culture needs protection, in order to maintain cultural liberty<sup>34</sup>.

**Liberty:** Using liberal discourse, the choice of culture is one important way to express one's autonomy. The choosing of one's norms, food, dress, holidays, rites of passage, language (including the language used at schools in which one's children attend<sup>35</sup>), make out a considerable part of one's preferred way of life. These are the types of decisions that ought to be protected by the state from external pressures – regardless of their origin. Indeed, one of the arguments used to justify state's neutrality was the wish to avoid the invasion of the state into areas of individual autonomy<sup>36</sup>.

However, it is simply impossible to maintain that goal with a 'hands off' policy with regards to culture<sup>37</sup>, since such neutrality is faced with a social situation of gross inequality between large and small cultures. If for example, a person that is affiliated with a small culture wishes to continue the affiliation, the economic pressure from popular cultures and languages (such as English, or Sunday as a day of rest) might prove too powerful. A state that abandons its citizens to a *cultural laissez faire* policy is no different than a state that abandons its citizens to a market *laissez faire* policy. Indeed, most left liberal thinkers deny that liberty exists in situations in which a flagrant lack of balance of power exists between an individual and corporations (or any other institution). In other words, citizens that cannot choose their cultural affiliations due to external pressures (and lack of resources) are not being treated with equal concern and respect. If a liberal state wishes to protect its citizens' ability to choose their own way of life, including their culture, then at least a policy of constraining large cultures is justified, as well as allocating resources relevant to the cultural sphere (that is, if distinguishing between the two is possible - see section 3). To conclude, in order to protect individual liberty *and* state neutrality, protection of cultural liberty is required<sup>38</sup>.

Protection of cultural liberty is justified not only on the basis of liberty, but also from the point of view of *equality*. State neutrality requires a policy of equal distribution with

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<sup>32</sup> See especially: chapter 3 of *On Liberty*.

<sup>33</sup> More than that, since moving between cultures involves costs, and the origin of the cost is arbitrary (being born to a minority culture), expecting the minority to bear the cost is unreasonable, at least for the subject of language.

<sup>34</sup> This argument does not deny the importance of rights to exit or to enter the majority group; rather, it points to a neglected point in debates about minority cultures: **the difficulty of remaining**. Under just background conditions, there is no reason to object to the movement of people between cultures of course. The point is that under unjust conditions, the move between cultures would be a result of duress, and not of consent.

<sup>35</sup> The issue is mainly one involving the language of instruction, rather than the content of the school curriculum.

<sup>36</sup> Dworkin, Ronald, "Liberalism", in *Private and Public Morality*, (ed) Stuart Hampshire, (Cambridge: Cambridge University Press, 1978), pp: 113-143, and Rawls, John, "The Priority of Right and Ideas of the Good", *Philosophy and Public Affairs*, Vol. 17, Iss. 4, Autumn 1988, pp: 251-276.

<sup>37</sup> To use the excellent term suggested by: Carens, Joseph. *Culture, Citizenship, and Community*. (Oxford: Oxford UP, 2000), pp: 8-14.

<sup>38</sup> The argument that neutrality cannot be achieved without taking into account existing social relations and the market needs further elaboration, beyond the scope of the current article.

regard to cultural-related goods<sup>39</sup>. The considerations of equality are valid in the case of small cultures both with regard to their status *vis-à-vis* other groups in the state, and *vis-à-vis* external influences.

The point of equality is justified due to two levels of arguments. From an individualist liberal point of view, once the choice of culture is viewed as an important choice that justifies holding governments to be under a duty (in order to protect this liberty), inequality in the ability to choose to continue to affiliate with the culture in which one grew up is a harm that calls for correction. So if there are two E.C. within one state, the members of both are eligible to resources that will enable them to choose to continue to affiliate with the culture in which they grew up<sup>40</sup>. However, an adequate allocation policy should relate to the background social situation. For example, a just allocation of culturally related goods, in a state in which there are two groups - one speaking a popular language, and the other a less common language - should **not** be identical, but sufficient, in order to enable members of both groups to keep their cultural affiliations<sup>41</sup>. The difference in allocation does not reflect a biased policy: on the contrary, it is required in order to achieve equality in access to resources that would enable equal opportunity for members of both groups to maintain their cultural affiliations. To use a Dworkinian term, a just allocation of culturally related goods should reflect 'treating people as equals' and not 'equal treatment'<sup>42</sup>.

On a less abstract level of argument, the justification for the allocation of resources for cultural liberty gains support once a move from hypothetical individualism to real life situations is made, since a proper understanding of many state's behavior on this issue will testify to the ongoing efforts of most states to promote a certain cultural agenda<sup>43</sup>. Considerations of equality should take into account real life politics, and not only abstract individualism.

Lastly, the *Alternatives* are not very attractive, especially due to the inevitability of choices (both from the point of view of the individual and the state) with regard to language and (some aspects of) culture. Two main options are available, the first being a cultural laissez faire policy, and the second the luck egalitarianism position (that I elaborate about below). I would argue that both will result in a violation of mainstream liberal values: the former of liberty, the latter of both respect **and** liberty.

A cultural laissez faire policy should be rejected for the same reason that an economic laissez faire one ought to be rejected - because it would violate the liberties of individuals who are affiliated with small cultures.

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<sup>39</sup> This is admittedly a vague expression, by which I mean all resources required in order to enable cultural liberty. See also section 3.

<sup>40</sup> The allocation should be sufficient in order to enable choice, so complete equality between the groups is unwarranted. See: Frankfurt, Harry, "Equality as a Moral Ideal", *Ethics*, Vol. 98, No. 1 (Oct. 1987), pp: 21-43.

<sup>41</sup> If I read them correctly, than this point separates my argument from that of Carens and Bhargava, see: Carens, Joseph. *Culture, Citizenship, and Community*, Bhargava, Rajeev, "What is Secularism For?", in *Secularism and its Critics*, (ed), Bhargava, Rajeev, (Oxford: Oxford UP, 1998), pp: 486-542.

<sup>42</sup> Dworkin, Ronald, *Taking Rights Seriously*. (Cambridge, Mass: Harvard UP, 1977), pp: 266-278.

<sup>43</sup> Yack, Bernard, "The Myth of the Civic Nation", in *Theorizing Nationalism* (ed) R. Beiner, (New York: SUNY Press, 1999), pp: 103-119, Taylor, Charles, "The Dynamics of Democratic Exclusion", *Journal of Democracy*, (Oct. 1998), pp: 143-156.

The luck egalitarian (LE hereafter) position has no lesser drawbacks. The LE position, as formulated by Dworkin, is that: “individuals should be relieved of consequential responsibility for those unfortunate features of their situation that are brute bad luck, but not from those that should be seen as flowing from their own choices”<sup>44</sup>. So, if cultural choice is possible, than no state support of culture may be justified. I would claim the opposite: that although choice in the domain of culture is possible, state protection of cultural liberty is mandatory.

The LE stance *vis-a-vis* cultural choice has several drawbacks: **first**, it treats cultural choices **as any other choices**, that is, my choice to (let us say) use English instead of Hebrew is similar to my decision to (let us say) export socks instead of shirts. This view puts all preferences at the same level of importance. But an index of importance surely exists!<sup>45</sup> Indeed, some liberties are more important than others, especially those liberties that are directly connected to one’s autonomy. One of the important points of liberalism (as opposed to utilitarianism) is to defend some core liberties against economic utility<sup>46</sup>. The range of decisions connected to culture and language fall into this category. Losing cultural freedom would take away significant parts of one’s autonomy, leaving the liberal protection of individual autonomy as an empty shell<sup>47</sup>.

**Second**, Dworkin suggests that people may be relieved of their involuntarily acquired expensive tastes, if they wish so. In such a case, a person may be eligible to *one time* ‘overcome’ compensation fees<sup>48</sup>. I would argue that a minority language such as Hebrew as a mother tongue is such a handicap, since it limits the employment possibilities people have (in a wide variety of professions, as to make it de facto impossible to use solely Hebrew), and is involuntarily acquired. To relieve oneself of this handicap is preferable from an economic point of view. However, the requirement that the individual shall view his cultural background as an involuntarily acquired expensive taste in order to accept reasonable assimilation funding is degrading, and is not compatible with treating people with equal concern and respect. More than that, given the flagrant inequality between small and large cultures, the potential wish of persons to receive such compensation for overcoming their “expensive” language would hardly count as proper consent<sup>49</sup>. In fact,

<sup>44</sup> Ronald Dworkin, *Sovereign Virtue* (Cambridge, Mass: Harvard UP, 2000), p. 287.

<sup>45</sup> I will not attempt to consider a full index here, but merely argue that since choices that are connected to culture make out a considerable part of one’s way of life, lack of ability to choose in the cultural sphere would amount to a deprivation of liberty beyond any reasonable account. For two examples of such an index of importance see: Rawls, John, *Political Liberalism*, (New York: Columbia UP, 1993), lecture 8, Nussbaum, Martha. *Women and Human Development*. (Cambridge: Cambridge UP, 2000), pp: 70-101.

<sup>46</sup> Dworkin, Ronald "Rights as Trumps", in *Theories of Rights*, (ed) Jeremy Waldron, (Oxford: Oxford University Press, 1984), pp: 153-168.

<sup>47</sup> Rawls acknowledges the hazards of collective action problems in economic and labor issues, but not in cultural issues. No explanation is given with regard to the different treatment of the two. For the former see: *A Theory of Justice*, pp: 235-236, for the latter see *Political Liberalism* (New York: Columbia UP, 1993), p. 193.

<sup>48</sup> Dworkin, Ronald, "Replies", in *Dworkin and His Critics*, (ed) J. Burley, (Oxford: Blackwell, 2004), pp. 345, 348.

<sup>49</sup> My view of this issue would have been different in circumstances in which there exists a background of equality in access to cultural resources for members of different E.C. In such cases, the wish of persons to move from one community to another should of course be respected by the state. That is, if a state offers **both** substantial cultural liberty **and** reasonable integration policies, I would argue that this is acceptable from the point of view of liberal justice (there is more to be said here, due to issues of freedom of association, but this is beyond the current article).

in American legal history, such arguments of ‘free consent’ were criticized as deprivations of liberty<sup>50</sup>.

**Lastly**, the LE view, as defined by Dworkin<sup>51</sup> with regard to assimilation, is simplistic. If a liberal state proposes *only* quick assimilation into the dominant culture to members of small cultures, based on economic reasons, and refuses to protect cultural liberty, it ignores a core aspect of individual liberty – and a probable (from an empirical point of view) response by the minority group would be instability and hostility.

The conclusion should be that a liberal state ought to protect cultural liberty, in order that persons may be able to continue to affiliate with the culture in which they grew up. Doing so would protect individual autonomy in a wide sphere of conduct that relates to culture, and would protect the individual from the undesirable effects of a cultural laissez faire policy. Declining to do so - if the state adopts cultural libertarianism - on the part of the state, would result in a deprivation of individual liberty and create gross inequalities in the sphere of cultural liberty. If the state adopts the luck egalitarian point of view, the result would be a deprivation of respect *and* liberty – in the name of economic utility.

However, if a state does wish to protect individual liberty in the sphere of culture, what liberal ‘tools’ can be used? To this issue we now turn.

### **3. From Formal Liberty to Culture to Substantial Liberty to Culture – How Can the Liberty to Culture be Protected – A Liberal Perspective.**

Liberal states protect individual liberty. This trivial statement is in reality quite complex because in what ways do liberal states protect individual liberty? And how may these methods be applied to issues of cultures?

In this section I shall briefly describe an ascending level of state involvement that is required in order to protect individual liberty, followed by a short discussion on the nature of public goods (which are important due to the nature of culturally related goods). I shall then illustrate how these steps may be applied to the field of culture. Lastly, I shall point to some variables that will assist in deciding which level of state involvement is required in different cases.

A preliminary point is that liberty, throughout this discussion, shall mean substantial liberty (in the sense explained above), and not merely formal liberty. Simply put, I shall not view liberty without adequate resources as proper liberty.

3.a State protection of liberty can: A. Avoid deprivation; B. Protect from deprivation (for example by regulating the market – i.e. limit the activity of corporations in a specific field of activity) ;or C. Assist the deprived, usually to allocate resources<sup>52</sup>.

For example, if a state wishes to protect freedom of movement, than it can choose from the following options: avoid making policy in this area (the state does not forbid its citizens from walking); protect citizens from deprivation (for example, force corporations

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<sup>50</sup> Urofsky, Melvin, I, "State Courts and Protective Legislation during the Progressive Era: A Reevaluation", *The Journal of American History*, Vol. 72, No. 1, (Jun. 1985), pp: 63-91

<sup>51</sup> "If, as must often be the case, it is to the long term advantage of the members of the minority to become assimilated to that general culture, the sooner that process begins the better." Ronald Dworkin. "Replies", in *Dworkin and His Critics*, p. 359.

<sup>52</sup> I'm partially relying here on: Shue, Henry. *Basic Rights*. (Princeton: Princeton UP, 1980), pp: 35-64

not to destroy sidewalks); or assist those deprived of the ability to walk – meaning to allocate resources in order that sidewalks will be build.

Some thinkers relate to non interference rights as negative liberties (or sometimes as negative rights), and to those liberties that require state funding as positive liberties (or rights). There is a debate with regard to the moral status of each<sup>53</sup>, in the context of which I shall simply argue (without going into detailed explanations) that I consider negative liberties to be as important as positive liberties and that the involvement of the state does not have (in my view) a special weight in deciding which liberties are more important. Furthermore, as the example of walking reveals, ‘pure’ negative rights are rare. To use again the walking example, the liberty to walk is meaningless without sidewalks, traffic lights and other infrastructure that may be quite expensive. Many times, non interference rights are far from being indeed the result of non interference - rather they require a previous social situation that is taken for granted<sup>54</sup>. This argument shall assist us in the discussion of culture in the next sub section.

Aside from the ascending level of state involvement discussed so far, special attention also needs to be given to public goods. Public goods pose interesting problems, since they require regulating the market – and therefore state involvement. A public good may be defined as: 'A common, collective, or public good is here defined as any good such that, if any person X' in a group X1,... Xn consumes it, it cannot feasibly be withheld from the others in that group'<sup>55</sup>.

From a market-oriented point of view, the difficulty public goods (such as clean air, a limitation on working hours, and arguably language and culture) pose is that the individual has no incentive to contribute to the achievement of the public good, since no incentive is available for a given individual. This gives rise to the problem of collective action, as follows: what if the individual interest of all leads to the deprivation of the liberty of all? In such cases, state intervention is mandatory, in order to *enable* individual freedom of choice.

Allow me to briefly illustrate a hypothetical example: suppose that in factory Z there is a voluntary decision of the workers not to work more than 65 hours a week. We may claim that it is in the individual interest of each worker not to work more than 65 hours a week, as working extended hours will leave them with very few available hours to spend with their families, or any other chosen activity. However, **it is even more profitable, to any individual worker, that the ban on overtime will be respected by all – save himself.** Why? The answer is that in such a case, he will be able to enjoy the best of all worlds: he will be the sole provider of a sought after commodity – *overtime*, and, he will be able to control the hours he offers, as there is no competition. This worker then has considerable power to both enjoy the public good (limitations upon hours of labour) and profit from his mild over time – let us say in total no more then 70 hours a week.

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<sup>53</sup>For a detailed elaboration see: Gavison, Ruth, "On the relationships between civil and political rights, and social and economic rights", in *The Globalization of Human Rights*, (eds), Jean-Marc Coicaud, Michael W. Doyle, and Anne-Marie Gardner, (Tokyo: UN University Press, 2003), pp: 23-56.

<sup>54</sup> Shue, Henry. *Basic Rights*, pp: 35-64, Holmes, Stephen, and Sunstein, Cass. *The Cost of Rights, Why Liberty Depends on Taxes*. (Norton: New York, 1999).

<sup>55</sup> Olson, Mancur. *The Logic of Collective Action*. (Cambridge, Mass: Harvard UP, 1965), p. 14.

However, since all the other workers understand this consideration just as well, a probable result will be that all the workers will defect from the working hour limitation voluntary agreement. In fact, the mere fear that other workers will be willing to work extended hours, and that a given manager might dismiss a worker who does not offer to work overtime, is enough to bring about the collective action dilemma. The outcome will be a grim one: the workers will have to work more than 65 hours a week, and the payment for the overtime will most likely be low.<sup>56</sup>

This problem has long been recognized by political scientists, and political theorists from Mill to Rawls<sup>57</sup> have justified state intervention in such cases. This point has been nicely put by J. S. Mill, in his 'Principles of Political Economy' (my emphasis):

There are matters in which the interference of law is required, not to overrule the judgment of individuals respecting their own interest, **but to give effect to that judgment:** they being unable to give effect to it except by concert, **which concert again cannot be effectual unless it receives validity and sanction from the law.** For illustration, and without prejudging the particular point, I may advert to the question of diminishing the hours of labour.<sup>58</sup>

For liberals, the dilemma is as follows: in order to protect individual liberty in some specific sphere of activity (let us say in the domain of labor hours) the individual needs to be in concert with other fellow workers. However, this unanimity is only effective if the concert is universal: and that requires mandatory membership, which again might result in a deprivation of liberty.<sup>59</sup> The right answer, as seems to me, is that coerced concert will prevent harsher deprivation of liberty than alternative options. This leads to the issue of a lack of choice – the collective action problem occurs in a situation in which the employer usually is more powerful than each individual worker. The example of towns owned by factory owners,<sup>60</sup> where the individual worker has two choices - obey or depart - is a healthy reminder of why mandatory unanimity (or at least some kind of regulations) is indeed the justified solution<sup>61</sup>.

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<sup>56</sup> See the explanation in: Barry Brian and Hardin, Russell, "Individual Actions and Collective Consequences" in Barry Brian and Hardin, Russell (eds), *Rational Man and Irrational Society?*, (London: Sage, 1982), pp: 19-37.

<sup>57</sup> Rawls, John, *A Theory of Justice*, pp: 236-237.

<sup>58</sup> Mill, John Stuart. *Principles of Political Economy*. (Longmans, Green: London, 1929), p. 963.

<sup>59</sup> These kinds of considerations have given rise to serious polemics, with regard to unions, such as the well known and controversial 'close shop' policy, see: White, Stuart, "Trade Unionism in a Liberal State", in *Freedom of Association*, (ed), A. Gutmann, (Princeton: Princeton UP, 1998), pp: 330-357.

<sup>60</sup> See the 'Pullman' town case illustrated by Michael Walzer, in *Spheres of Justice*, (New York: Basic Books, 1983), pp: 295-303.

<sup>61</sup> This point requires a short explanation. Some persons affiliated to small cultures will wish to disassociate themselves due to the collective action dilemma, and some, due to the positive externalities offered by popular cultures. The policies suggested should therefore avoid assuming an internal consensus with regard to the desirability of continued affiliation to the local culture. Rather, it should enable those affiliated to make a *non contaminated* (or at least less contaminated) decision with regard to their affiliation, and to prevent the collective action dilemma or the duress created by cultural markets to (de facto) coerce individuals affiliated to small cultures to disassociate themselves from their culture. Where possible, the policies should enable choice, therefore, and not assume consensus for exit or loyalty (and see section 4). It is interesting to note, that collective action dilemmas in cases of mixed motivation are not unique to cultural issues. See: Russell, Hardin, *Collective Action* (Baltimore: the Johns Hopkins U.P, 1982), chapter

To conclude, public goods are in the middle ground of state actions, between non intervention and allocation of resources; however, their allocation is highly important to the individual well being, although liberal theories have somewhat neglected them<sup>62</sup>.

3.b. How can we apply the ‘ladder’ of state involvement described in the previous sub section to the field of culture? The state should begin with simple, non interventionist strategies, and move up the scale if necessary. For example, if in a given state there is a minority encompassing culture, than the first step should be non intervention. Similar to the issue of the liberty to walk, some previous threshold of social reality is needed. For example, if a policy of non intervention is decided upon, then some institutions, such as schools that teach in the minority language, probably already exist. So pure negative liberties, we may say, are rare in the cultural sphere as well. This point gains support from the wide spread agreement that in the domain of culture, cultural neutrality (through a *hands off* approach) is impossible<sup>63</sup>. To conclude: similar to other liberties, cultural liberties usually assume a previous socio – cultural threshold of existing institutions. A minimalist conclusion that may be derived here is that a policy of forced assimilation is forbidden.

The next level is avoidance of deprivation, i.e. constraining big cultures. This is similar to constraining large corporations in the economic sphere. Liberals (at least left leaning liberals) have argued that a concentration of power is dangerous for personal freedom, regardless of the identity of the power holder – be it the state or large corporations. Therefore I quoted Popper at the beginning of this article. I propose to adopt the same policies *vis-à-vis* big cultures<sup>64</sup>. For example, incentives should be offered to members of small cultures using their language in contexts in which using more popular languages is becoming customary. For example, if an Israeli decides to use Hebrew in a context that is becoming more and more English dominated (such as academic publications), incentives may be offered to him by the state.

As mentioned above, public goods (such as language) stand in the middle - between non interventionist policies and positive liberties. In order that the liberty to continue to choose local cultures and languages may be maintained for members of small cultures, some regulation of the (cultural) market is needed. A balance should be found between protecting the liberty (and choice) to continue to affiliate with the local culture, and the possible wish to abandon it (see section 4).

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5, and see the different view of this issue by Jacob Levy, *The Multiculturalism of Fear* (Oxford: Oxford UP, 2000), chapter 4.

<sup>62</sup> Miller, David, “Justice, Democracy and Public Goods”, in *Justice and Democracy*, (eds) Dowding, K. et. Al. (Cambridge: Cambridge UP, 2004), pp: 127-150.

<sup>63</sup> Raz, Joseph. *The Morality of Freedom*. (Oxford: Clarendon Press, 1986). pp: 107-162, Kymlicka, Will, "Comments on Shachar and Spinner Halev: An Update from the Multiculturalism Wars", in *Multicultural Questions* (eds) Christian Joppke and Steven Lukes, (Oxford: Oxford University Press, 1999), pp: 112-133. Although neutrality through a *hands off* approach is indeed impossible, as it does not take into account the influence of the market, I shall argue that neutrality of aims that includes a relation to cultural markets is indeed justified, but this shall remain in the background of the current article.

<sup>64</sup> This article deals solely with questions of distribution within states. I do not discuss the question of global linguistic distributive issues. In this regard see the interesting (although I remain uncommitted with regard to his views) following article: Van Parijs, Philippe, "Linguistic Justice" *Politics Philosophy and Economics*, Vol.1 (2002), pp: 59-74.

Lastly, in some cases a policy of non interventionism and regulation of the market of cultures will not be sufficient in order to maintain cultural liberty. In such cases, allocation of resources is required. Some examples may include subsidizing local literature and music, accepting some regulations with regard to days of rest and so on (see section 4).

It needs to be emphasized that without those measures, the ability to choose to continue to affiliate with the local culture would become de facto impossible, due to the high cost required from an individual who wishes to do so. Sometime, the mere fear that fellow members of a small culture will choose (that is, will be under pressure, created by the market) to affiliate with other cultures might bring about the dynamic of collective action. The probable result would be a deprivation of liberty, as the price for choosing the local culture would be too high. Constraining the free market of cultures and allocating resources (if needed) is the only way to protect individual liberty in the domain of culture.

Some hard lined communitarians may object to the logic of my argument, and will argue that people would remain loyal to their language and culture, regardless of the cost involved. I, on the other hand, would argue that it is both unfair and cruel to force an individual who is affiliated with a small culture to choose between economic well being and his cultural affiliation. Some may choose to endure any economic cost in order to maintain their cultural affiliation. But when the price of choosing the local culture increases the liberty to choose the local culture will diminish. My reply to the communitarian objection therefore, shall be that the importance communitarians attach to culture ought not to blind them from considering the costs involved in continued affiliation with small cultures in a globalized world<sup>65</sup>.

3.c. How a decision regarding the adequate level of cultural protection may be made?

If a convincing case can be made for protecting cultural liberty, how can a decision be made with regard to the adequate level of state involvement? The relevant factor should be the cost required, in order that a substantial cultural liberty may be exercised, from the perspective of a reasonable person. This argument is very abstract, and its actual application to specific cases would involve variables such as the number of people who speak a specific language, the amount of available resources and the economic ability of a reasonable person in a given society. As the logic of the argument hints, the higher the cost of choosing the local culture is, the justification for allocation augments (as long as other important liberties and interests are not harmed<sup>66</sup>).

It is important to emphasize that the protection should enable a continued choosing of the local culture, but *without* violating other essential liberties; otherwise, the goal of protecting liberty will not be achieved. It is worth while to note that the ability to exercise substantial cultural liberty is the important factor, while the suitable level of state involvement is contingent, and depends on the relevant social factors. Similar to Rawls'

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<sup>65</sup> I do not claim that the economic incentive is the sole motivation for choosing culture, only that at the present world, disregarding the effects of the market upon cultural choices would undermine cultural liberty.

<sup>66</sup> In some cases the feasibility of the allocation and the cost required in order to enable substantial cultural liberty may point to different allocation policies. In such cases, a reasonable solution should take into account both. Simply put, more equality is better than none, and the inability to answer all cultural needs does not mean that a partial answer to cultural inequality is not valuable.

primary goods<sup>67</sup>, these resources are required in order that a cultural choice *may* be made; however, the decision how to use these resources is mainly<sup>68</sup> that of the individual. It is important to stress that limits to protection of cultural liberties exist<sup>69</sup>. Since the goal of the 'liberty to culture' argument and of the policies suggested is to protect (cultural) liberty, the policies intended to protect cultural liberty cannot be over used by ways that violate liberty without evident self contradiction. Indeed, in some cases, the demands of some minority members for certain policies, or for a greater amount of resources (required in order to enable cultural choice) are evidently exaggerated. In such cases not all demands will be granted, even if the ability to maintain cultural choice (in the case of some very small cultures) will be harmed. In this aspect, cultural liberty is similar to other liberties and rights in that limits exist on rights and other important interests, and the liberty to culture is no exception<sup>70</sup>. The mere idea of limits does not harm the importance of cultural liberty, but rather, it puts it in a reasonable, liberal framework. The next and last section discusses the limits of cultural protection.

#### 4. How to protect cultural liberty: the importance (and possibility) of limits.

If a state wishes to protect the liberty to culture, two tactics should usually be avoided: First, *without any* cultural regulation or resource allocation policy, the cost of choosing the local culture would be too high. Similar to pure laissez faire policy in the 19th century U.S. this would amount to a de facto deprivation of cultural liberty<sup>71</sup>.

Secondly, *too much* regulation will be counter productive as well: it will deprive individuals of the option **not** to choose the local culture.

Between these two extreme alternatives, lies a vast area of permissible policies. The rule of thumb, however, should always be that the liberty to either continue to affiliate with the local culture, or to avoid doing so, will be preserved.

An example may be in place: if a given state decides to finance the playing of local music, than deciding upon the number of radio stations that play this music is required. If, for example, there are 100 radio stations, then deciding that one shall play local music is permissible; but deciding that 99 out of 100 shall play solely local music is a deprivation of liberty, for both the musicians and radio listeners who wish to choose non local music. Another important factor is the cost of financing too many radio stations. Although protecting cultural liberty is important, it is advisable to remember other needs exist as well. Over protective cultural regulation would probably prove to be too costly, at the expense of other important needs<sup>72</sup>.

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<sup>67</sup> Rawls, John, "Social Unity and Primary Goods", in *Utilitarianism and Beyond*, (eds) A. Sen and B. Williams, (Cambridge: Cambridge UP, 1982), pp: 159-186.

<sup>68</sup> I somewhat qualify the individual's free discretion in the usage of culturally related goods, due to the nature of public goods - see at the next section (4).

<sup>69</sup> One important point is that internal restrictions are a **necessary** by product of allocating public goods. Strict avoidance of internal restrictions would amount to a deprivation of cultural liberties, and any other interests that involve public goods, although the exact nature of reasonable internal restrictions needs to be elaborated in detail. However, a complete avoidance of internal restrictions is unlikely. See the opposite view of Kymlicka: *Multicultural Citizenship*, pp: 35-37, 42-43.

<sup>70</sup> See: Waldron Jeremy, "Rights in Conflict", *Ethics*, 99, (April 1989), pp: 503-519.

<sup>71</sup> Usually, the smaller the culture, the chances are that some policies will be needed, but for some popular cultures and languages, such measures will be unnecessary.

<sup>72</sup> There are other *feasibility constraints*, that are beyond the scope of this article. For example, nation building constraints, or the requirements of modernization, might make the wish to protect the liberty to

Two points are important in the context of this example: first, what is local music? Is it music that was written by locals? Does it mean that all band members are locals? Such a decision needs to be made following an internal debate about the meaning of ‘local’, with preferably a pluralistic result.

Second, without a state decision to allocate some resources that would make the broadcasting of local music possible, the logic of the market would make it too unprofitable to exist in the first place. Of course, sometimes the market supports local music - obviously in such cases state involvement is not required. The important point is, however, that the market shall not be the sole deciding factor.

The example of local music may be seen as a peripheral one; however, as mentioned above, a complete cultural *laissez faire* policy, that includes music, literature, language used on signs and in businesses, days of rest, language used at schools etc, shall result in a deprivation of the ability to choose the local culture. In other words, although a specific piece of cultural policy may be seen as peripheral, lack of *any kind* of cultural regulations would amount to a deprivation of liberty and should be avoided.

If the liberty to culture is to be protected, as mentioned above, chosen policies should enable both choosing the local culture and choosing *not* to choose it. This involves limitations upon ‘defense’ policies, although disputes on what is regarded as sufficient defense and what is regarded as exaggerated policies would doubtless arise. These disputes should *not*, however, mean that trying to illustrate such a middle path is useless. Illustrating limits means that not every cultural demand would be answered. The main reason for this is intrinsic to the liberty to culture argument. First, since culture is a product of choice, individual responsibility is possible in the first place<sup>73</sup>. Second, since protecting liberty requires many different sorts of resources, it is unlikely that sufficient resources would exist in order to answer each and every need. Therefore, answering each and every cultural need would probably amount to a deprivation of substantive liberty in other areas, and therefore costly cultural regulation will be counter productive to the goal of protecting liberty, and should be avoided. Other reasons for avoiding answering each and every cultural demand exist as well. In order to avoid a snow ball effect of cultural demands (similar to the economic ‘moral hazard’<sup>74</sup>) full funding of cultural demands is probably best avoided. Lastly, the purpose of the liberty to culture argument is to protect liberties, and not to insure the survival of cultures. While defending cultural liberty is a requisite of liberal justice, protecting cultures is not – because, it is a world view in itself. Therefore policies that aim to answer each and every cultural demand ought to be rejected.

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culture very difficult or even impossible. In some cases many E.C. exist within one state, some of them large, other medium, while others are small. The relations between the groups are also significant. The rule of thumb should always be that unless significant reasons exist, the liberty to culture should be protected. I leave unanswered (for the current article) the exact limits of possible policies *vis-à-vis* the different scenarios I hinted upon in this remark.

<sup>73</sup> That is, arguments that view cultural demands that aim at **maintaining** cultural affiliation with the culture one grew up in as arbitrary sources of inequality should be rejected (although the case of ‘over come’ policies is more complicated and requires a different argument). See the general illustration in this regard of Susan Mendus, "Choice, Chance and Multiculturalism", in *Multiculturalism Reconsidered*, (ed), P. Kelly, (Cambridge: Polity, 2002), pp: 31-44.

<sup>74</sup> Rosen, Harvey. *Public Finance*. (Boston: McGraw-Hill, 2002), pp: 201-202.

**Conclusion.**

This article proposed an argument about liberty and culture. I have argued that cultural affiliation is an important part of individual liberty. A person may choose whether to use his mother tongue in various contexts, whether to keep his culture's days of rest, and a variety of other cultural conducts. I argued that the liberty to culture is under threat due to global occurrences that make the choice to continue to affiliate with small cultures an unprofitable choice from an economic point of view. However, protecting cultural liberty is of significant importance, sufficient in scope in order to argue that liberal states are under a duty to protect cultural liberty, because of considerations of liberty, equality and respect. This can be done by using a variety of policies, through an ascending level of state involvement, from non interventionism to allocation of resources. These policies may include introducing incentives offered to people who choose to continue to affiliate with their local culture. I argued, following left leaning liberal ideas about freedom, that a policy of cultural *laissez faire* will result in a deprivation of liberty - similar to economic *laissez faire*.

The policies suggested should enable a reasonable person to keep his cultural liberty. It needs to be emphasized, however, that the objective of these policies is to protect individual liberty, and therefore violations of individual liberty, above a certain limit (required in order to protect public goods), cannot be justified by the suggested approach. How to apply those guidelines to the variety of cultural conducts and demands is a complex question that requires a separate analysis. However, as proposed above, a preferable path is to maintain substantial cultural liberty, but to avoid over protective policies that aim to protect cultures.

Liberal theories of justice have been consistent in their attempt to defend individual liberty from all who threaten them, be it the state or large corporations. I have attempted to argue that the same logic should be employed, in the present, to the cultural sphere. I hope this paper would contribute to the ongoing liberal endeavor to protect individual liberty.