

NATIONALISM AND CRISIS

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Abstract

Nationalism seems a persistent ideology in academia as much as in politics; despite the fact that it has been shown that nationalism is deeply unjust for minorities. A case for national identity is often invoked to supplement liberalism regarding the inner difficulties that liberal theories have to explain their membership, assure stability and produce endorsement. So, it seems that national identity may also be required for justice. While this controversy continues, I argue that a different approach is available. We can define a conception of legitimacy independently from a conception of justice, and then ask what legitimacy requires from our national allegiances. If everything goes well, much of the controversy from justice disappears as we find that the case for cultural nationalism may be illegitimate for liberal democracies.

Keywords: nationalism, distributive justice, legitimacy, political self-determination, minority rights, majority rights.

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Resumen

Parece que el nacionalismo es una ideología persistente en la academia y en la política a pesar de que parece profundamente injusto para las minorías. El caso de la identidad nacional es frecuentemente defendido para complementar al liberalismo con respecto a los problemas internos que tienen las teorías liberales para explicar la membresía, asegurar la estabilidad y producir el apoyo. Por ello, parece que la justicia requiere el apoyo a la identidad nacional. Mientras que esta controversia puede continuar, yo argumento que existe una aproximación alternativa. Podemos definir una concepción de legitimidad independiente de una concepción de justicia y después preguntarnos qué requiere la legitimidad de nuestras lealtades nacionales. Si todo sale bien, mucho de la controversia desde la justicia desaparece mientras nos encontramos con que el caso en favor del nacionalismo cultural puede ser ilegítimo para las democracias liberales.

Palabras clave: nacionalismo, justicia distributiva, legitimidad, auto-determinación política, derechos de las minorías, derechos de las mayorías.

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Nationalism once again. Again, someone like Donald Trump is promising to solve the main problems of America by excluding minorities and by isolating America from the exterior. Again, someone like David Cameron is blaming multiculturalism, globalization and integration for the fact that terrorists are now recruited in liberal democracies, from our sons and neighbours, even within middle and upper educated classes.¹ Again the three main left-winged parties in Mexico (PRI, PRD and MORENA) are campaigning with slogans associated with the doctrine of revolutionary nationalism. But why nationalism over and over again? I am not going to pretend it is in any way surprising that nationalist sensibilities arise in the middle of a crisis. To look for support in the ones we find closer to us, in the nearest and the dearest, might be just an automatic response.² What surprises me I must confess is that—despite its bad reputation in terms of colonialism, authoritarianism, and racism—nationalist policies are still invoked by government officials and even by scholars as an innovative solution to old problems.

In this paper, I want to address what kind of relationship a liberal democracy ought to have with nationalism, what is the appropriate relationship between nationalism and nation-state, and how pertinent or illusory is this relation in times of crisis (or at any time for that matter). In particular, I want to ask if nationalism is able to supplement liberalism about the problem that traditionally liberalism has to generate its own support (Rawls, 2001: 89, 181) and explain who is a member (Whelan, 1983). I will argue that, at least for the case of liberal democracies it is overall illegitimate to resort to certain kinds of nationalism in times of crisis.

Nationalism is the doctrine of one state one nation: it holds the idea that the nation (culture, language and/or identity) should coincide—as much as possible—with the state.³ Nationalism is often associated with oppression, manipulation and conflict because it submerges individual

¹ My account of the Prime Minister's ideas has been taken mostly from his speech on multiculturalism February the 5th at the Munich security conference and his speech on the Big Society in Liverpool July 19th.

² About the many challenges posed by nationalism and identity to political and social life, see the illuminating essay by Gracia (2005). As this essay is mainly conceptual, many applied problems will lay outside of its scope.

³ See Anderson (2006).

identity within a national whole; it gives elites or political leaders potential opportunities to manipulate or control the masses; and because it feeds beliefs of ethnic, moral or cultural superiority that, in turn, justifies in the eye of the fanatic the forcible subjugation, annexation or exploitation of "lesser peoples" (Hobsbawm, 1990; Özkirimli, 2000). So many writers wish to conclude that nationalism is incompatible in principle with liberal democracies (Mason, 1999: 263; Abizadeh, 2002; Lægaard, 2006: 401; Wellman & Cole, 2011: 52). Yet right now for many, nationalism seems like a fresh solution. Most of us place a great expressive value in our mother language and believe that our personal identity is to a certain extent shaped by the culture prevailing where we were born and raised. We find a strong symbolic value in the landscape. We believe that sharing language and identity helps us to *feel at home* along with those with whom we share the social space. There is also a strong conviction that this cultural self-identification gives all of us powerful incentives to comply with the heavy burdens of participation that contemporary liberal democracies impose upon us. Because of this, many writers think that nationalist identity and nationalist policies are desperately needed to supplement liberal democracies (Gellner, 1983; Miller, 1995; Tamir, 1993; Gams, 1998).

So why, if nationalism is *prima facie* unjust, does it keep coming back again and again? And at the same time, why if nationalism is so evidently needed does it seem so hard to accommodate with the requirements of liberal values and justice? It seems to me that what justice requires from our national allegiances is largely undetermined. Nationalism poses a dilemma: many examples could suggest that nationalist policies may be just and unjust at the same time. This dilemma is the subject of this paper; but I will not try to decide what justice requires from our national allegiances though. My aim will instead be to find a way around the dilemma. While it seems difficult to decide matters of justice and nationalism, we may begin by deciding what sorts of nationalism are legitimate for the case of liberal democracies. Once we know what is illegitimate about nationalism, many cases will become uninteresting or unattractive from the perspective of justice. So, the dilemma of nationalism will deflate as a consequence. I will argue then that most forms of cultural nationalism are illegitimate.

The agenda of this paper runs as follows. First, I will illustrate the main intuition around the idea that nationalist policies are required by justice and the main intuitions in the opposite direction. Then, I will

lay down operative conceptions of justice and legitimacy explaining in which areas they are co-extensional and in which areas they are conceptually different. Later in the third part I will use the conception of legitimacy (as independent with justice) to argue that cultural nationalism is illegitimate for the case of liberal democracies.

Before jumping into the distinctions and arguments, three clarifications are needed. First, it is important to note that in this paper I focus in cultural forms of nationalism rather than in ethnic forms which seem categorically unjust. The kind of nationalism I'm interested in is not grounded in the myth of common descent. It rather grounds a *prima facie* case for political self-determination in the purported ethical dimension of the relationship between the individual process of self-identification and identity with the shared culture prevalent or dominant within the state (Abizadeh, 2012: 873).

Second, legitimacy is the virtue of justified exercises of political power. As such, it has various dimensions. There is an exclusively empirical and contingent dimension about what people in fact accept as justified exercise of power and about what the support of people in fact provide to certain institutions; no matter how just or fair these institutions are. This is the kind of legitimacy that political scientists measure with polls of perception. If we care only about this dimension, we will end up with the claim that people often regard as legitimate what is essentially wrong, as when fascist politicians reach office through democratic institutions. In this paper, I assume that this *de facto* legitimacy is not the whole picture and that a more holistic approach encompasses both relevant facts and moral virtues. Indeed, legitimacy has also an evaluative dimension because morality largely helps us to determine both what exercises of political power we can accept as morally justified, all things considered; and what exercises of political power could be morally justified (Williams, 2005; Simmons, 1999; Waldron, 1993; Wellman, 1996).

Third, I start with two assumptions about the moral character of liberal democracies in the hope that today these won't be too problematic. First, democracy is more than majority rule. Majority rule is limited by minority's rights. Minorities have certain rights that must be protected such as freedom of speech and freedom of worship. The second assumption is that equal concern (which is among these essential rights) is in principle more than political equality and equality of opportunities. For instance, citizens need to be able to think about themselves as a valid

source of legitimate reasonable claims instead of thinking themselves as submitted to fortune. (Rawls, 2001: 20) That means that society must provide the conditions for everyone to be a member without losing her dignity.

1. Approaches to Nationalism

These clarifications above allow me to make two kinds of distinctions to organize the discussion of this section. Distinctions of the first kind separate different ways to support nationalism within a liberal democracy. Distinctions of the second kind separate different research approaches to nationalism.

There are at least two ways in which, it seems to me, it might be possible for a liberal democracy to be a nationalist state (and remain a liberal democracy of some kind). First there is the *familiar nationalism*. All liberal democracies are a bit nationalist to the extent they are organized as nation-states. For the last 200 years, liberal democracies have been intimately linked to the nation-state. This kind of nationalism is the remainder of a long process of de-nationalization of nationalist institutions of the nation-state undertaken by liberalism, democratic theory and multiculturalism (Raz, 1998). But in a *substantive nationalist state*, which is the second way a liberal democracy could be nationalist, the comprehensive culture of a dominant group is to be expanded to everyone within the state.

Now, this kind of substantive nationalism raises at least two main concerns: one empirical and one philosophical. The empirical concern has to do with the value and importance of certain social goods that allegedly nationalism allows to achieve and/or protect. Typically, this instrumental case for nationalism has the form "In order to protect or preserve X we may justifiably protect and cultivate national culture and self-identification with that culture". X typically represents economy, markets, productivity, security, trust, solidarity, political will, and/or cultural distinctiveness. In order to address concerns of the first kind we need to ask: is establishing nationalist institutions or arrangements really necessary and/or sufficient to secure X? The problem is that each of these empirical claims about the positive contribution of nationalist institutions to well-being is likely to be challenged by evidence in the opposite direction, showing that multicultural, pluralist, multinational liberal democracies perform better or at least the same in many ways

and tend to be more peaceful, competitive, and productive. High living standards of liberal democracies, such as Canada and Switzerland, are paradigmatic.

The philosophical concern focuses rather in what justice requires from our group allegiances. We need to ask: do those who seek to establish substantive nationalist institutions have a moral right to do it? Or more specifically, we may ask as well, has a majority the right to have certain culture established as the culture that shapes the institutions and policies of the state? Or similarly, is the majority owed that kind of advantage over other groups? Notice that empirical concerns above won't by themselves address conclusively our second philosophical concern because they won't by themselves clarify the nature or extension of the putative rights and claims of those subjected to nationalist institutions or social arrangements. Even if the empirical survey vindicates the instrumental case, we have to know if liberal democracies have the moral right to protect X by nationalist means.

These distinctions serve the purpose of narrowing the scope of our discussion to the philosophical concerns raised by substantive forms of nationalism. So we can now spell out the question in this way: must a liberal democracy be a mere civic familiar nation-state or can it be a substantive nationalist nation-state as Mr. Trump seems to foresee for USA or as the left-winged parties campaign for in Mexico?

There are familiar examples of both kinds of states. Canada is a civic nation-state which upholds familiar civic nationalist institutions. Canada contains a variety of ethnic groups and it is in fact formed by two linguistic nations. The Québécoise for instance enjoy a great deal of independence and self-determination. Along with the Anglo-Canadian majority and the French-Canadian minority, there are several minority cultural-groups. Israel is an example of a substantially nationalist nation-state. Israel accepts Jews coming from all cultural backgrounds but identifies itself, in its basic laws as a Jewish state. In Israel, you can marry only under the Jewish faith and you need to appeal for the law of return in order to be granted with citizenship. The United Kingdom and Mexico now still fall somewhere in between, as most of liberal democracies do indeed. They contain several nations, but these nations in practice share a common language. Their basic law is civic in form, but the society is still traditionally structured following pervasive cultural values and unwritten rules. They are mostly democratic, but their politicians, in times of crisis play with the idea to push British and

Mexican institutions to a greater coincidence with the culture of the majority, claiming that this will help to sort some of the problems they face. The USA also lays somewhere in between. It has in principle liberal and democratic institutions suitable for a nation composed initially by immigrants; yet from time to time the exceptionalist doctrine of a "special destiny" that depicts the USA as the "shining city upon the hill" is invoked.⁴

Coming back to Mr. Trump's campaign, he believes that unemployment, the decline of average income and household's debt are the result of immigration and America's integration to the globe. So he promises to make America great again by building a wall along the Mexican border, denying Muslims entry into the United States hoping that isolation from global economy and diminishment of immigration could help to nurture and protect American traditional values and culture. In my view this should be worthy of the most serious attention because it will definitively incline the USA—and some other countries under similar circumstances—to the side of substantive nationalist-states instead to the side of merely familiar civic nation-states, moving away in fact, from the direction that the former multicultural and globalist policies have recommended (Raz, 1998:195).

2. What justice requires from national allegiances?

Let me repeat the question at hand: must a liberal democracy be a mere familiar civic nation-state or can it be a substantive nationalist nation-state as Mr. Trump seems to foresee for USA? One way to approach this question is to ask what justice requires from our national allegiances. Defenders of substantive nationalism (Gellner, 1983; Tamir, 1993; Ignatieff, 1994; Miller, 1995; Gams, 1998) believe that cultural identity has the kind of value that allows people to cherish and cultivate the attributes that distinguish the group from any other, because it is this distinctive character which allows the production of certain important social goods that are unique to the character of the group. That may even require states to exclude outsiders in order to protect that character (Miller, 2015: 10). In this section I want to show to what extent the discussion from justice is too controversial to be taken up without help.

⁴ Many thanks to Francisco García González (ITESM, Mexico City Campus) for showing this to me.

In the next section I will argue that we could supplement the discussion from justice with considerations of legitimacy provided that we define legitimacy independently from justice.

The main feature of this defence is that the case for group-partiality within a nation is not only based upon the idea of the instrumental value of culture, identity and nationality.⁵ Rather nationality is a special relationship because it is also intrinsically valuable (Miller, 1995: 163). David Miller is probably the most prominent defender of nationalism. According to him, sharing the same culture has an intrinsic value because it implies sharing an ethical bond of some kind (Miller, 1995: 40). On this view, nations have a special ethical dimension, because members share an ethically meaningful bond insofar they are part of a community with historical continuity that stretches back into the past and forward into the future. During that time this community is symbolically connected to a particular territory, its landscapes, climate conditions and specific resources that model a distinctive way of life. Members share a strong belief and mutual commitment in the existence and conservation of that distinct community because their own identity is shaped to a certain extent by this identity; and as a result, their membership has an active character; which means that the community is created and shaped by the results of actions and decisions taken by past and current members (Miller, 1995: 27). Thus, all these different ethical dimensions together (group-bonding, geography, history self-identification and culture) allow the production of certain important social goods that are unique to the national character and at the same time ground a moral right to political self-determination.

Now we can see in what sense nationalists claim that nationalist institutions are not only just but even required by justice. The doctrine of "one nation, one state" makes no sense if the nation in question has not got good claims of political self-determination. According to substantive nationalists, since the culture of the nation offers to its members among

⁵ Instrumental reasons are provided to argue that in a liberal democracy conditions are such that the requirements of social justice and deliberative democracy make cooperation and compliance very demanding. At the heart of what most politicians and scholars state, is the conviction that it is very difficult for liberal and democratic values to take root in society without the pervasive effect of the institutions of nationhood and their constant nation-building activities. (Gellner, 1983; Miller, 1995; Tamir, 1993; Ignatieff, 1994; Gams, 1998).

other things ways of socialization, horizons of choice and value, and means of self-identification, members living in the community have a legitimate interest in controlling their own culture, because this is a matter of members deciding about their common fate. The legitimate interest and the practical need they have in deciding about their faith as community grounds what we consider good claims for self-determination (Miller, 1995: 63).

So far so good, but we can find good reasons of justice in the opposite direction (Abizadeh, 2002; Lægaard, 2006: 401; Wellman & Cole, 2011: 52). Two of them will suffice. First, there is, it seems to me, a *prima facie* conviction that democracy is more than majority rule and that members of a community need to be able to accept the dominion of the state over them without losing their dignity. It is not possible for each citizen to see the government as his government, unless the government shows to each citizen an equal concern and equal respect. (Dworkin, 2001: 205). It seems deeply unjust to ask full compliance and cooperation from members of cultural and linguistic minorities and at the same time ask them to endure a society where the institutions are shaped in such a way that work in an enormous disadvantage for them because they allow to "feel at home" only to members of the majority. It seems we are left with two possibilities. Either nationalism requires equal standing for all cultural groups, including those cultural minorities, defeating its own purpose of protecting the culture of the majority; or nationalism begs the question because it is presupposing the kind of priority that it intended to ground, which, as a result, undermines its case of justice.

Second, we can distinguish societal culture from nationalist culture. Societal culture is the shared culture of a societal group which is used to socialize new members of the society (Margalit & Raz, 1990: 443-7). In contrast, nationalist culture is a societal culture nationalist in character. Members of the group will acquire societal culture typically as a matter of belonging because this is what socializes them as members of the group; whereas it seems that nationalist culture is a matter of achievement. To be a *good Mexican* is a matter of achievement but to be a Mexican is not. In this sense, it seems to me that the principle of nationalist self-determination is incompatible with liberalism because it is grounded in controversial meta-ethical particularism and nationalist perfectionism, and once nationalism gives up these claims, it becomes civic familiar nationalism which is unproblematic. The idea that nationalism is the sole or the best social structure for public morality and individual

socialization is contingent upon finding empirical proof of both the instrumental-value claims and the psychological or sociological claim that individuals are better socialized under nationalist institutions. So, the connection that nationalists establish from what they call “national culture” to the right to extend the culture of the dominant group to everyone is never established (Abizadeh, 2002).

To be sure, notice that nationalists confuse the dominion that a state legitimately exercises over citizens from whom it extracts allegiance and whose will it seeks to represent; with the process through which culture gets shaped, formed, nourished and protected. It is not the fact that a community is nationalist in its sensibility, character and in its culture what justifies political self-determination; but rather it is the fact that a group has the kind of social structure and organization suitable for socialization (Margalit & Raz, 1990). But socialization could be undertaken by using many different values and culture. Socialization need not befall only by using nationalist culture or nationalist institutions. What is needed is a social structure⁶ in order to make at least the relevant features of the culture accessible for people to be socialized (as members of that particular group). For instance, we can think in cultural groups which are multicultural or cosmopolitan in character (Margalit & Raz, 1990: 447, 451). Furthermore, if the purpose of a shared culture is to socialize every member within the society so they can belong; in fact, nationalist culture defeats the purpose of culture by alienating members of the state which are not members of the majority. On closer inspection, an argument needs to be provided to show that claims of culture become claims of justice.⁷ Without it it seems deeply unjust to impose nationalist institutions and culture to groups with a different national character.

I believe this leaves open one important distinction to be made. We should distinguish on one side between political self-determination and cultural self-determination (Rasmussen, 2009). Nations are not the only

⁶ I believe this imply the organizational and authority potential capacity to build up institutions. But this idea needs to be unpacked further.

⁷ Miller himself abdicates this premise (Miller, 2009: 303). Miller realized that distributive justice could apply to people engaged in many types of relationships, and not only to relationships established by means of shared culture. In the same way, there can be several motivations to enthusiastically comply with the demands of distributive justice; nationalist solidarity is not the sole source of normative motivation.

groups with good claims of self-determination; they are not the only case of political self-determination as we know for sure because there are far more national groups than nation-states. But nations might indeed be a specific case of cultural self-determination. It seems to me that being interested in something generally does not mean that we have to elevate that interest into policy and institutions that demand obedience. The legitimate interest that people have in their culture does not ground directly a claim for political self-determination.

Yet again, the intuition behind substantive forms of nationalism is indeed powerful and compelling. We all can agree that people have a fundamental interest in what government does as they have a fundamental interest in what other people's attitude is towards their culture. If a majority wishes to have certain culture established as the culture that shapes the institutions and policies of the state; that will work as a very attractive advantage for them. Of course, this will work as well as a disadvantage for people with different identities associated with other different cultural groups. But then, they may argue, in a democracy often the advantages for the majority may result in disadvantages for some. If the majority wants a certain kind of environment and culture, then justice may require the minority to defer. At the heart of what most politicians and scholars state, is the conviction that it is very difficult for liberal and democratic values to take root in society without the pervasive effect of the institutions of nationhood and their constant nation-building activities. And it seems difficult to figure out other ways to ensure virtuous citizens than the cultural means and forms recommended by substantive nationalism (Normand & Kymlicka, 2005: 212-214). These intrinsic reasons are often provided to argue that personal identity has such a structure that will be seriously harmed, if it is deprived of the kind of identity that nationhood provides. So, nationalism seems required by justice.

Now I am sure that many other good arguments can be invoked for each side. But my objective in this section has never been to settle the question. I wanted merely to demonstrate the dimension of the controversy. On the face of it, these considerations about justice and national allegiance cannot by themselves decide the core question: do those who seek to establish nationalist institutions have a moral right to do so? Nationalists rightly identify that liberal democracies have a moral character partly because of the cultural ties of those who belong. So, justice requires to protect identity and culture. But liberals recognize

that the majority has not gotten a moral right to all the advantages that come from having certain culture established as the culture that shapes the institutions and policies of the state. Thus, justice also requires us to qualify cultural rights so the minority groups can also belong; particularly if socialization can in fact be reached by means of more inclusive forms of culture. Accounts of distributive justice find it difficult to decide the extension of rights majorities have over minorities and immigrants from a different cultural background; as much as they find it difficult to decide the extension of minority rights and the rights of immigrants. I suspect that considerations of justice by themselves won't conclusively address our second philosophical concern because they won't by themselves clarify the nature, justification, and content of the putative moral rights of those involved in this controversy.

3. Legitimacy and Justice

Nothing that I have said so far is equivalent to say that conceptually is not possible for any account of justice to adjudicate the case for or against nationalism. I suspect that less-ideal accounts of justice will be required in order to proceed case by case.⁸ But I won't pursue the matter further. Instead I propose to take a step back and distinguish two different kinds of question.

First, we could ask—as we have done in the last section—how much can the majority benefit from the saliency of their culture (when we protect and cultivate the culture of the majority) without harming other minority groups? When we ask questions like this we find ourselves in the terrain of *justice*, where we are required to distribute benefits and burdens among the people who participate in cooperation. But as we saw, we could also ask who can permissibly decide how much *right* has the majority to enjoy the benefits of extending their culture to the rest? Or what is the permissible scope and limits of these kinds of decisions? When we ask questions like these we find ourselves in the terrain of legitimacy.

The distinction is clear but not sharp. When we ask about what justice requires from national allegiances, we assess a distributive matter because we want to quantify the benefits and burdens produced by a particular ratio between the rights of majorities against the size of

⁸ About non-ideal accounts of justice see Valentini (2012).

the rights of minorities. But it seems that the answer to this question is undetermined because we lack a comprehensive theory about how group-rights and special obligations fit with each other. Indeed, what nationalists claim for their group, minority groups could claim for themselves. And justice finds it difficult to adjudicate formally these queries. But if we ask instead if liberal democracies have permission to limit or prevent the detrimental effects of extending the culture of the majority over the minorities (regardless this is just or not); or whether it is morally required or even morally permissible that the state enforces and protects the rights of the minorities (regardless this is just or unjust for the majorities); then we are not asking distributive questions any more. We have shifted the moral scope from distributive questions of *how much*, for the substantive moral questions of what is morally required and/or permissible.

To be sure, recall that justice and legitimacy are both political virtues because they both assess how well institutions protect the dignity of those over whom they extract obedience and allegiance and those over whom they exercise political power. The idea that institutions ought to protect dignity includes the requirement that political power should be consistent with the equal objective value of the life every one (Dworkin, 2011: 13-19). Then, the use of political power, coercion and the distribution of burdens and benefits should not be arbitrary; but it should be solely addressed to maintain the conditions that make possible in turn, participation, social cooperation, and compliance without requiring that any member or group give up their autonomy, authenticity, and self-respect. This means that coercive power needs to be exercised with equal concern. While the concept of justice determines what we owe to each other after a cooperative relationship; the concept of legitimacy is more primitive; because it serves as a moral background for justice. The concept of legitimacy determines who or what can guarantee a stable regimen able to secure order, protection, safety, trust, and cooperation (Williams, 2005: 3-5).

Now beware that general concepts need to be particularized and qualified into conceptions appropriate for each case.⁹ The case in hand are liberal democracies. In a liberal democracy to treat everyone with equal concern means that everyone could develop the minimum degree

⁹ About the difference between concept and conceptions of justice see Rawls (1971: 5). For concepts of justice see Cohen (2008: 279).

of capacities to take full part in the cooperative life of society. For instance, citizens need to be able to think about themselves as a valid source of legitimately reasonable claims, instead of thinking of themselves as being submitted to will and fortune (Rawls, 2001: 20). In a liberal democracy to protect the dignity of everyone means that participation, social cooperation, and compliance with the rule of law should not be seen as something that implies to accept the dominion of the state as a form of humiliation (Dworkin, 2011). It is not possible for each citizen to see the government as his government, unless the government shows each citizen an equal concern and equal respect (Dworkin, 2001: 205). That is why many philosophers see democratic legitimacy as the main conception of legitimacy appropriate for liberal democracies (Buchanan, 2003; Cristiano, 2008; Peter, 2009; Estlund, 2008; Kolodny, 2014). At the same time justice as fairness is a conception of distributive justice greatly accepted as appropriate for liberal democracies too.

Notice that as powerful and compelling justice as fairness is, it remains—as constrained by Rawls himself—a conception of justice appropriate *only* for the case of the basic structure and the constitutional essentials. But the concept of justice requires many other conceptions of justice such as restorative justice, transgenerational justice, allocative justice; retributive justice etc., (Rawls, 2001: 10-11). I assume that the same happens with legitimacy and many conceptions of legitimacy may be invoked for other cases where democratic legitimacy is not required.

I cannot discuss this here. But I suspect that much of the confusion between these two political virtues derives from the fact that in some cases legitimacy and justice may be co-extensional. Rawls was interested in the problem of justification and endorsement of a conception of justice (appropriate only for the basic structure) in conditions of pluralism. In that specific case, a conception of justice is grounded in liberal legitimacy (as public justification) and liberal legitimacy is at the end conceived as a form of political justice. Rawls is right in stressing that public institutions of a liberal democracy are just when they distribute the burdens and benefits from social cooperation as they are owed (Rawls, 2001: 5-6). He is also right to claim that in a liberal democracy legitimacy the authority of the state should be publicly justifiable (Rawls, 2000: 12). But in turn

authority is justified only when it is just. Therefore, the distance between justice and legitimacy is merely apparent *for this case*.¹⁰

But legitimacy and justice are not co-extensional in every possible case even in liberal democracies, so they should be conceptually distinguished. This analysis of the conceptual relationship between the two, importantly explains why (i) in the conceptual literature about distributive justice for the basic structure of liberal democracies, the two concepts merge (Slate, 2015; Song, 2012; Rossi, 2014) and also (ii) why in many factual cases what is just may not be legitimate and what is legitimate may not be just.¹¹ But for the purposes of this work

¹⁰ I follow Sleat (2015); Rossi (2014); Song (2012); Peter (2008); Simmons (2001); in claiming that Rawls' political liberalism overlaps the scope of legitimacy and justice as an argumentative tactic to deal with reasonable pluralism. This argumentative tactic becomes attractive because Rawls believes it is not possible to argue for justice as fairness in terms of the goodness of justice, without making it unacceptable for the citizens of a pluralistic society, since citizens have different and irreconcilable ideas about what is good and just. In *A Theory of Justice* Rawls argued for a conception of justice as fairness by explaining how justice is good (Song, 2012: 153-61). According to Rawls the primary role of his principles is to "specify a system of cooperation designed to advance the good of those taking part of it. (Rawls, 1971: 4)" But Rawls came to accept that this justification was not available for everyone in a pluralistic society. The Rawlcean problem of justification of a theory of justice shifts then from an argument of the justness undertook by a comprehensive theory of morality to an argument of the legitimacy of justice as fairness capable to elucidate: "[...] in the light of what reasons and values—of what kind of a conception of justice—can citizens legitimately exercise that coercive power over one another? (Rawls, 2001: 41)". That's why for that specific problem as framed by Rawls, justice and legitimacy overlap. But supporting a conception of justice in conditions of reasonable pluralism is not the sole problem of political theory. Applied ethics and political theory raise many other problems so we must resist the tendency to always overlap legitimacy and justice.

¹¹ Examples of unjust legitimate exercise of political power are sadly familiar to everyone. Women's right to vote wasn't legal until the late 19th century, but that fact didn't by itself mean that Finland, Sweden or the UK were illegitimate. Illegitimate exercises of just political power are far less ubiquitous but not unseen. Suppose that the best lawyers of the world arrive to the uncontested conclusion that the Swedish system of law and political arrangement is the most perfect in the globe. This means, to a certain extent, that it is just. To prove it they convince the president of Nicaragua to implement

it is sufficient to say that justice assess distributions and their effects; and legitimacy assesses the kind of social order and the moral rights it upholds. For instance, it is a matter of justice if we consider the effect that nationality tests have in minority groups, or the effects of high levels of immigration has in trust and cooperation among citizens. But when we ask what kind of political arrangement we need in order to accommodate those conflicting claims of justice, we in fact ask how we interpret the relative value between cultural homogeneity and diversity; between freedom and equality, between order and liberty, between security and plurality, and so on. This latest kind of question about legitimacy is the kind I think we can and should take on before we adjudicate problems of justice. Again, questions about legitimacy

the Swedish legal and political system. In this case the law will be just, but it will not be legitimately exercised over the Nicaraguan people, because the implementation is the result of an imposition that failed to abide to any procedural requirements of democratic legitimacy. It is not unusual in a liberal democracy to regard certain decisions as authoritarian and therefore illegitimate despite they could be considered what justice requires. Perhaps that is the case when the judiciary changes radically the law without the support of the majority. Consider the landmark case *Brown v. Board of Education* in the USA. It was a matter of (procedural) legitimacy that in *Plessy v. Ferguson* (1896) the Supreme Court rejected the claim that practices of segregation familiar in the south of the country violated the fourteenth amendment with its “equal protection of the laws” clause. The Supreme Court argued that the clause was satisfied provided that separate but equal facilities were available. Needless to say that the decision enjoyed popular support at the time and states that practiced segregation resisted for a long time integration relentlessly. Yet, in 1954 with *Brown*, the Supreme Court unanimously found a way to overturn *Plessy* regardless of its precedent and favour black plaintiffs by banning segregation in schools. It is true that many more people found segregation wrong when *Brown* was decided than it had when *Plessy* was decided. It is also true that Chief Justice Earl Warren found a rhetoric way to say that the Court wasn’t really overruling *Plessy*. But it may be true as well that, given the precedent and the popular rejection, the legitimacy of this Court’s decision could be challenged, even if there were powerful reasons of justice to endorse it. Notice that it could be also argued that segregation is illegitimate. But that was precisely what was at stake in *Plessy* and *Brown*. Legitimacy in the USA required equal protection of the laws to begin with; thus segregation was unjust because it was incoherent with the fourteenth amendment. See Dworkin (1986: 29-30).

seem somehow more primitive than questions about justice since what is morally required seems prior to what is owed, because justice always assumes certain cooperative institutional order with a moral character which allows the questions of justice to arise (Rawls, 2001: 5-10).

Before we move on and ask what legitimacy requires from national allegiances, recall the different dimensions of legitimacy. Legitimacy is not only about what people in fact endorse even if it is wrong. When we assess how well our political institutions and their exercise of political power live up to our moral conceptions, we have to deal with legitimacy in normative and interpretative ways. Legitimacy is normative when it determines what people should accept as morally justified exercises of political power. And as opposed to these ideal considerations, it is interpretative when it determines what people could accept as justified all things considered in their actual circumstances. For instance, as a normative matter we can say that states that forbid women to vote *should* be illegitimate. And that is indeed true for liberal democracies here and now. But, all things considered, states which forbid votes for women were legitimate one century ago. After all, limited voting rights were only gained by women in Finland, Iceland, Sweden and some western U.S. states in the late 19th century.

This distinction between legitimacy and justice is central because nationalism too is a theory of legitimacy. Nationalism may be stated as a theory of legitimacy engineered to supplement liberal justice (Miller, 2008: 375). Both liberal accounts of distributive justice and democratic theory begin with the idea of states as units of justice with a fixed set of members and a defined territorial dimension (Simmons, 2001: 302). On this regard, nationalism attempts to supplement liberalism with a theory of nationalist legitimacy, which tries to explain membership in terms of nationhood or national identity. For instance, Miller's account of legitimacy provides an answer to the problem of membership: members are those who share the same culture. If this account is successful, it means that duties of distributive justice are not available as ground for a right to immigrate; because the principle of nationality limits the scope of distributive duties to the institutions that apply only to members of the same nation (Miller, 2005: 198). On this token a liberal democracy would be justified in closing its borders and rejecting immigrants as Mr. Trump suggests. Then, what does legitimacy require from our national allegiances?

4. Cultural Nationalism as a Theory of Legitimacy.

I think it is worth asking, leaving the regrettable history and bad press of nationalism behind: can we reconcile liberal democracy with nationalism? Recall liberal democracies are characterized by exercising dominion over people from many different cultural and even national backgrounds. So, is liberal nationalism compatible with the idea that a pluralist state can commit itself, officially (through its constitutional arrangements and its public speech) to one of the cultures present in the state, provided that it is the culture of the majority?

Note that this is not a question of justice because it does not particularly seek to quantify how much concern majorities owe to minorities and how much tolerance minorities owe to majorities. Instead it is a question about the justification needed when one makes decisions in the name of others and one enforces the result of those decisions over those in which name one has taken those decisions in the first place. Therefore, it is a question of what legitimacy requires from our national allegiances.

As we saw, a liberal nationalist says a big 'YES' to this question by providing a nationalist account of legitimacy. Nationalist legitimacy is defined by the requisite function of protecting national culture. Alien cultures threaten to change the continuity of national culture (Miller, 1995: 88). Public policy, including immigration controls¹² should be worked out with the purpose of establishing the conditions and means necessary to secure the continuity and authenticity of national culture (Miller, 2007: 221).

In order to deliver a theory of legitimacy suitable for supplementing political liberalism, nationalists that are engaged in the revitalization and domestication of nationalism, have to change their ideal or belief of supremacy of race and kin with the socially acquired traits of culture. If they succeed, nationalist legitimacy would state that members are

¹² Miller concludes that nations have a right to control and restrict immigration based on national self-determination (Miller, 1995: 63). Given the intrinsic and instrumental value of culture, citizens have a legitimate right to control as much as possible the continuity and authenticity of their public shared culture. It seems very difficult that people could control the development of their culture without the right to restrict immigration (Miller, 2005: 200).

involved in a special relationship with each other through their own national culture, which is worth being protected by national boundaries. Common membership is therefore formulated in terms of belonging to a group that shares national culture. Common history and language are promoted as a way of defending and unifying the nation, which embodies a national culture. For this reason, outsiders are legitimately excluded as a result of the obligation the state has to protect the national culture. So let's assume that a nationalist state has by its own cultural uniqueness a good case of political self-determination based on their case of cultural self-determination because context matters, because our bonds and allegiances matter. It is the richness of the context in which the individual is rooted, that better explains his moral motivations, duties and responsibilities (Miller, 2002).

This remark about the influence of context in political philosophy, is indeed a powerful statement that must prevent us from theoretical dogmatism and illusory generalizations; but I don't believe it helps the case of nationalist state much because, if cultural context matters so much, then cultural groups, particularly national minorities, should be respected and the state should refrain from imposing in any way the culture of the dominant group in the design of any institutions and policies. Indeed, the arguments analysed so far do not provide any reason about why nationalism of the nation-state should have priority over minority nationalism. But suppose still that I'm wrong and a liberal democracy does well by submitting its citizens to a process of nation-building using nationalist culture. I will challenge then whether the state should or should not exercise its dominion in the way that affects how culture should be shaped, protected and nourished so it could be available to socialize the members of the state. So now the question is this: Is liberal democracy compatible with nationalist claims of cultural self-determination?

Suppose that the government should have a role in protecting and nourishing culture. Culture as a whole includes human expression of many different kinds as I indicated above. Culture is so vast, that the state won't be able to protect it all. Presumably not all features of culture are worthy of protection. If the state or any other centralized government institution ought to protect national culture, then it must be expected that the government and its officials have a respectable opinion about what should be protected or what needs priority. Preservation of the culture of the majority cannot work out without finding some way

to identify or at least make reasonable judgments about what people want to preserve or what is worth preserving. It will be necessary for the state to know what is under a threat or what is worthy of protection. It will be necessary to decide which means are suitable for exercising that protective enterprise. Furthermore, assessing culture might be difficult because cultural elements are often a matter of tune and degree, things that are difficult to translate into policy (Dworkin, 2001: 228). Therefore, for taking those decisions about tune, degree and character the state will need to interpret culture. Also, to determine the way to hand-pick what they regard as worth preserving in order to focus institutional efforts; it will be necessary also to decide what means are suitable for exercising this protective enterprise.

Would citizens agree in government selective interpretation? Is it desirable that a nationalist state take part of this cultural management? Would citizens, even the nationalist ones, endorse government's selective interpretation as legitimate? I believe for the case of liberal democracies, there is a *prima facie* conviction that culture should be authentic. If the dominion that the state would exercise over culture involves selective interpretation, then any attempt coming from the state to preserve cultural integrity and authenticity will paradoxically lead to adopting an inauthentic way of life (Waldron, 1995: 101; Scheffler, 2007).

One way to understand what is authenticity and what it demands from culture is to recall the familiar contrast between autonomy and domination (Dworkin, 2011: 212). All forms of art, most expressions of identity and culture as a whole cannot escape influence from others. One literary movement always finds inspiration in other past movements. We hear some of the most distinctive sounds of Beethoven essayed first in one or two concerts from Bach. But if culture has to preserve its autonomy and integrity it needs to scape domination, otherwise it becomes a form of counter-culture, that is a cultural expression whose distinctive character is to eschew one form of cultural subjugation.

In order to assess whether citizens (even those members of the majority) would endorse or not the selective interpretation and management of culture as legitimate; it seems that we are in a position to add yet another distinction or slice of culture to the ones considered before. When political power is exercised in order to establish a determined set of core cultural features, with the purpose of establishing a socio-political and educational artefact, with cultural management purposes as those described before, then it is not working out a public

nationalist culture; it is rather tailoring an *official nationalist culture*. This seems to be controversial because it means that one selection and idiosyncratic interpretation of the culture of one group or one part of the group, is coercively transformed into the culture of the nationalist state.

Consider this other way to make the same point. The main problem is that it is not clear how an institution devoted to cultural protection could be legitimate. Recall that the concept of legitimacy requires political order with a moral character and the conception of legitimacy appropriated for liberal democracies requires that the authority of the state is publicly justifiable (Rawls, 2000: 12). That means that a legitimate liberal democracy must provide the conditions for everyone to be a member without losing one's self-respect and value as a person. It is not possible for each citizen to see the government as her government, unless the government shows each citizen an equal concern and equal respect (Dworkin, 2001: 205). So, given the conditions of pluralism, it seems odd that an institution could exercise dominion over people's culture and yet remain justifiable to everyone on those terms.

But this is too quick. A defender of Substantive Cultural Nationalism could object that it is not true that centralized governmental efforts to support cultural production and preservation always end up in illegitimate expressions of coercion over cultural authenticity, such as the so-called official culture. If authenticity is a valuable trait of culture, the state could participate in preserving cultural authenticity in national culture merely by coordinating efforts and providing financial and material support. If this is sound, maybe institutional nationalist culture is not always illegitimate and my concerns only amount to important risks that the defenders of nationalist culture need to consider. In contrast, it seems that my rejection of the Substantive Nationalist State leads me to advocate for a *tout court* institutional withdrawal from cultural matters. Does this mean that a liberal democracy has no role to play in culture?¹³

On the contrary the state has stringent obligations regarding culture. This means that the state must provide the conditions that will make different worth cultural expressions to thrive and prosper (Dworkin, 2001: 229-233). But the kind of culture over which the state exercises legitimate dominion should be a public political culture; this means that

¹³ I am grateful to an anonymous referee for this objection.

culture of the nation-state must be in its nature political and civic rather than nationalist or in any way morally comprehensive, particularly if its citizenry is composed by many cultural groups.

As an exercise of cultural self-determination, the defenders of the Substantive Nationalist State are unable to work out an appropriate conception of legitimacy for liberal democracies, because to extend the culture of the majority over minorities is a form of cultural domination. When nationalism ceases to invoke a pre-political culture as a way to identify members, and starts to see nationalist culture as a long term nation-building project, then it is abandoning its attempt to offer an account of legitimacy and instead it is only targeting current members with the desired tailored cultural background (Abizadeh, 2012:872). This means that the institutional projection of the culture of the majority over the rest of the citizenry does not identify members of a pre-political national demos, it merely coercively acculturates the existing members of the society. It is very difficult to reconcile nation building projects with the idea of equal concern and respect, especially if treating someone with equal concern involves to respect individual authenticity and responsibility (Dworkin, 2011).

During this discussion, I hope I have shown that even if majorities may have a legitimate interest in controlling and participating in their culture; this interest is not equivalent to a right, let alone to having the right to become a culturally homogeneous nation-state. Just because it is good for people to have something, you cannot say they have the right to have it. The upshot is this: Cultural self-determination is not necessarily connected with political self-determination. So, when we say that a majority should elevate their culture to the nation-state level because it is good for them, more justification is needed. The imposition of an official nationalist culture is problematic, because centralized cultural management seems to take away member's control over their culture, which is at odds with the main motivation of cultural-nationalist of preserving member's control over their culture. That is why this kind of institutional protection of nationalist culture is always a form of cultural domination.

If this is not convincing for the defender of Substantive Nationalism, let me insist on a reason that makes nationalist legitimacy incompatible with liberal-democracy. I believe that certain decisions must not be taken collectively, but instead should be made individually. A culture, broad or nationalist, can be formed, sustained, and protected not collectively

but organically as the result of free people making free choices (Dworkin, 2001: 229-233). But the broad culture, even if it is nationalist in character, has no political role to play, at least in a liberal democracy (Habermas, 1994: 23-25). In contrast, a public political culture (as opposed to broad, comprehensive, or official culture) of a legitimate liberal democratic state is an artificial structure engendered with the purpose of showing what values and virtues we share as members of the political community in a way that could appeal to all. Public political culture must be civic in nature, and not nationalist, perfectionist or morally comprehensive, particularly if the citizenry is composed by many cultural groups.

If liberalism has failed in delivering its own support and unity, or if it is undetermined regarding the scope and the site of its institutions, that does not mean that the best available solution is to engage in romantic projects of nation-building. The objective should never be, I hope, to eliminate the plurality produced by liberal democracies by substituting it with purported tailored nationalist cultures.

5. Conclusions

In this paper, I conceptually distinguish concerns of legitimacy from concerns of justice. When we ask what justice requires from national allegiances we wonder things like how much concern majorities owe to minorities regarding the imposition of dominant culture or how much tolerance and effort minorities owe to majorities in order to accommodate themselves to those requirements. I hope I can show that from that perspective only the discussion seems so far inconclusive: it seems difficult that liberal values take root without nationalist institutions and it seems difficult to respect the rights of minorities without limiting nationalist expectations.

Without pursuing the problem any further I have suggested a different manoeuvre. To ask what legitimacy requires from our national allegiances in order to deflate the discussion of what justice requires. The hope was that by identifying what is illegitimate from nationalist claims we could at least eliminate some of the options within the discussion from justice.

I found that the extension of the dominant culture to the rest of society is illegitimate for the case of liberal democracies mainly because there is no justified connection between cultural self-determination and political self-determination.

For the nationalist, it seems obvious that the two kinds of self-determination are connected. But consider an alternative story about the relationship between culture and institutions. If being a member of a cultural group facilitates a welfare state and deliberative democracy, it may not be in virtue of how familiarized each of us is with the mainstream culture; but rather it may be in virtue of how open the cultural dialogue for every one of us is in the polity. It may be that the broad conditions of open participation are what delivers the kind of trust and mutual engagement that social justice and deliberative democracy demand (Abizadeh, 2002). The virtues of justice and legitimacy are the ones that foster cooperation, not the virtues of patriotism and national alliance. The problem is that by favouring, if not imposing the culture of the majority, nationalists are not making it particularly easy for many people to incorporate themselves to the cultural dialogue of the polity.

If the majority protects their culture by isolating it from alien influences, then the mainstream culture may be seen as an instrument of domination where some people cannot participate without losing their dignity. In this case, culture is no longer seen as a common ground where everyone can participate in a cultural dialogue. The fact that a majority shares the same culture does not seem to justify the transformation of a liberal democracy into a nationalist nation-state, in virtue of the fact that cultural self-determination and political self-determination are not necessarily linked.

Members of the majority are entitled to be collectively in charge of their own culture, but that does not necessarily entitle them to wield rights of political self-determination. This is because unity, endorsement and stability may not necessarily be a result of how successful the majority is in offering or imposing their culture to the rest of the members, particularly in pluralist, multicultural, multinational liberal democracies. Instead, they may be a result of how successful we are all in guaranteeing that everyone with interests and talents could participate as equals in the everyday construction of our common culture. It may very well be true that nationalism is one of the many obstacles that liberal democracies may face in order to boost inclusion.

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