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Constitutionalizing Deliberative Democracy in Multilingual Societies

Adeno Addis

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By
Adeno Addis*

Prologue: (breaking news): Jürgen Habermas Goes to Tamil Eelam

Assume a conversation between a distinguished political theorist, who has spent considerable intellectual energy developing and defending a version of deliberative democracy, and the leader of a guerrilla movement waging war against the central government of an island state with the purpose of establishing a homeland in parts of that state. Let us call the political theorist Jürgen Habermas and the freedom movement the Tamil Tigers. The Tigers have been fighting for a homeland, Tamil Eelam, on the eastern and northern part of Sri Lanka. Assume Jürgen Habermas, the distinguished German political philosopher, went to Sri Lanka as a member of a delegation from the European Union to explore the possibility of bringing the Tamil Tigers and the Sri Lankan government to the negotiation table with the purpose of settling this decades-old dispute that has taken many lives and ruined the economy of that island state.[1] Assume also that during this trip Habermas had the following conversation with the Leader of the Tamil Tigers (Leader). Assume this is how the conversation went:

Habermas: I understand why the Tamils want to establish their own state. The treatment of the Tamil minority and their culture by the Sinhala majority has not been a model of deliberative democracy. Tamils were either unequally treated or altogether excluded from certain areas of political and economic life.[2]

Leader: Although I am not quite sure what the big word "deliberative"

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1. *See* Neil De Votta, *Ethnolinguistic Nationalism and Ethnic Conflict in Sri Lanka, in* FIGHTING WORDS: LANGUAGE POLICY AND ETHNIC RELATIONS IN ASIA 105-139 (Michael E. Brown & Šumit Ganguly eds., 2003).

2. The Sinhalese, speaking Sinhala, constitute about 74 percent of the population while the Sri Lankan Tamils make up 12 percent of the population. The remaining 14 percent is made up of Indian Tamils (about 6 percent), Muslims (7 percent) and other smaller groups (1 percent). *See* BENJAMIN REILLY, DEMOCRACY IN DIVIDED SOCIETIES: ELECTORAL ENGINEERING FOR CONFLICT MANAGEMENT 113 (2001).

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means, I appreciate what you said, professor. Many Europeans (and for that matter Americans as well) do not understand our cause or why we have decided to fight for a homeland.

Habermas: As much as I understand your frustration with the central government, I believe that your desire to establish your own state is a terrible mistake. First, there is no guarantee that you will succeed. The status quo with all its destructive dimensions will likely continue. Second, even if you succeed you may have a minority within the new territory that will be concerned about the same sorts of issues that had concerned you as a minority when you were part of Sri Lanka. The same cycle of violence might start all over again. Third, it seems anachronistic that in the age of globalization where borders are becoming "mere speed bumps on the information superhighway"[3] and where nations are joining to form larger and larger economic and political unions that you want to break up a small island-nation into two sovereign states.

Leader: Professor, let me respond to your points one by one. As to your point about the possibility of us not prevailing, there is of course that possibility. But with all due respect that is a judgment that I and my colleagues are better positioned to make than you are. And I am convinced we will prevail. Your second point is more interesting. Yes, we will have some minorities, but those minorities will not pose any problem for the new state, partly because they will not be subjected to the oppressive conditions that Tamils have been subjected to and partly because there will not be a sizable minority within the new state. And if members of minorities wish to join their kin in Sri Lanka they can certainly do that as well. I understand your third point about globalization quite well. There is no doubt that economic and political necessities and technological realities will incline many nation-states to form larger and larger unions. You probably had your own European Union in mind when you made your point. But such unions would have to be voluntary; minorities must feel secure that their cultures and interests will be fully protected within that union. Professor, you know more than I do about world trends, but isn't it also true that globalization, assisted by the communication revolution, is encouraging the emergence of strong nationalism and the desire to separate in those countries where minority cultures and interests are under siege?

Habermas: I agree with your assessment of counter trends in globalization, but I believe that the best remedy for oppressed minorities is not to attempt to constitute another state, but to work toward establishing a system which takes their interests and cultures seriously. I and others have developed a theory that we believe will respond to those needs and interests. We call it deliberative democracy,[4] where individuals and groups engage each other in good faith dia-

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3. A few years ago a website proclaimed the following on its masthead: "National borders are just speedbumps on the information superhighway." *See* Adeno Addis, *The Thin State in Thick Globalism: Sovereignty in the Information Age*, 37 VAND. J. TRANSNAT'L L. 1 (2004).

4. *See* JÜRGEN HABERMAS, BETWEEN FACTS AND NORMS: CONTRIBUTION TO A DISCOURSE

logues for the purpose of developing the common interest and a common identity. Constitutionalized discourse rather than political divorce[5] is what the Tamils need.

Leader: That sounds good in the abstract, but I don't know how that would work in real life. In any case, may I ask you a simple question, professor?

Habermas: Sure.

Leader: Assuming deliberative democracy actually works in the way that you think it does and the Tamils decide to try deliberative democracy within Sri Lanka, through which of Sri Lanka's languages is the deliberation to be conducted? I do not know whether you know our history, professor, but one of the reasons that pushed us to take arms is the action of the Sri Lankan parliament to make Sinhala, the language of the majority, the official language while denying a similar status to our language.[6] So, I ask you again, professor, through which of the languages is the deliberation to be conducted?

Habermas: I am afraid that is not a question either deliberative democrats or this delegation can answer.

Leader: Professor, if deliberative democrats cannot answer that question then their theories cannot help us or others in similar circumstances.

I.
INTRODUCTION

How would a theory of deliberative democracy resolve a contest when that contest is over the very means of deliberation? Astonishingly, this issue, despite being so central to the deliberative process, is often bracketed or simply ignored by scholars, even distinguished ones.[7] On the rare occasion when the issue is raised, it is done in a cursory way. For example, Alan Patten notes that linguistic diversity "can be a serious barrier to the full flourishing of [deliberative democracy],"[8] but he never explains whether there are ways of dealing with this "seri-

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THEORY OF LAW AND DEMOCRACY (William Rehg trans., 1996); Joshua Cohen, *Deliberation and Democratic Legitimacy, in* THE GOOD POLITY: NORMATIVE ANALYSIS OF THE STATE 17 (Alan Hamlin and Philip Pettit eds., 1989).

5.   By political divorce I mean to refer to secession. I shall indicate later why political divorce will not resolve the problem of language-based disputes in much of the world.

6.   *See* De Votta, *supra* note 1, at 124-137; M. L. Marasinghe, *Ethnic Politics and Constitutional Reform: The Indo-Sri Lankan Accord,* 37 INT'L & COMP. L. Q. 551 (1988).

7.   A few years ago Will Kymlicka and Ian Shapiro made a similar observation. In their introduction to the NOMOS issue on Ethnicity and Group Rights, they observed: "It is remarkable…how often 'discourse ethics' or 'deliberative democracy' is invoked as a means of addressing inter-group conflicts, without even asking in which language this discourse/deliberation will take place." Will Kymlicka & Ian Shapiro, *Introduction* to ETHNICITY AND GROUP RIGHTS 3, 21 n.3 (Ian Shapiro & Will Kymlicka eds., 1997).

8.   Alan Patten, *Political Theory and Language Policy,* 29 POL. THEORY 691, 701 (2001). Interestingly, in another article Patten simply observes that it was not clear to him "how much commonality of language deliberative democracy actually requires." Alan Patten, *Liberal Neutrality and*

ous barrier," nor does he explore what the barrier says about the idea of deliberative democracy itself. Indeed, as Patten himself observed,[9] until very recently there had not even been many normative reflections on or about language policies generally let alone inquiry into how a particular language policy would affect the prospect of deliberative democracy. Legal scholars in particular have been embarrassingly silent on this issue.[10] While many distinguished legal scholars, especially in the area of constitutional law, have appropriated the notion of deliberative democracy to develop and defend what they consider to be appropriate legal and political institutions,[11] none has indicated how disagreements about the language of deliberation is to be resolved.[12] This at a time when prominent legal and political philosophers are urging that disagreement be viewed as being "in the core, not at the periphery," at least in some areas of legality.[13]

The total neglect of the language question by legal scholars is a bit puzzling given the important role that language generally plays in the legal profession. Lawyers spend a great deal of time studying carefully the language of this or that statute, the language in the decisions of this or that court to understand and develop the norms and principles that guide or should guide future legislators and judges. Put simply, lawyers are trained to understand the vital importance of

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Language Policy, 31 PHIL. & PUB. AFF. 356, 379 (2003).

9.   Patten, *Political Theory and Language Policy, supra* note 8, at 691 ("[D]espite the ubiquity and salience of language disputes, surprisingly little has been written about language policy from a normative point of view." *See also* Patten, *Liberal Neutrality and Language Policy, supra* note 8. In addition to Patten's work, there is now a collection of essays on language co-edited by Patten himself. LANGUAGE RIGHTS AND POLITICAL THEORY (Will Kymlicka and Alan Patten eds., 2003).

10.   One exception is Drucilla Cornell & William W. Bratton, *Deadweight Costs and Intrinsic Wrongs of Nativism: Economics, Freedom, and Legal Suppression of Spanish*, 84 CORNELL L. REV. 595 (1999). I have myself attempted to contribute to the conversation. *See* Adeno Addis, *Cultural Integrity and Political Unity: The Politics of Language in Multilingual States*, 33 ARIZ. ST. L. J. 719 (2001).

11.   *See* Cass Sunstein, *Beyond the Republican Revival*, 97 YALE L. J. 1539, 1544 (1988) (For Sunstein, deliberation refers to the propositions that "laws must be supported by argument and reasons" and that "[p]olitical actors must justify their choices by appealing to the broader public good."); Cass Sunstein, *Deliberative Trouble? Why Group Go to Extremes*, 110 YALE L. J. 71 (2000); Frank Michelman, *Law's Republic* 97 YALE L. J. 1493 (1988); Frank Michelman, *The Supreme Court 1985 Term: Foreword: Traces of Self-Government* 100 HARV. L. REV. 4 (1986). *See also* BRUCE ACKERMAN, WE THE PEOPLE: FOUNDATIONS 5 (1991) ("Behold, then, a pretty picture: an America in which a rediscovered Constitution is the subject of an ongoing dialogue amongst scholars, professionals, and the people at large; an America in which this dialogue between theory and practice allows the citizenry, and its political representatives, a deepening sense of its historical identity as it faces the transforming challenges of the future."). Bruce Ackerman has in fact coauthored a book specifically on deliberative democracy. BRUCE ACKERMAN & JAMES S. FISHKIN, DELIBERATION DAY (2004).

12.   As Patten and Kymlicka note "there is growing recognition that any plausible theory of deliberative democracy has to grapple with issues of linguistic diversity." Alan Patten & Will Kymlicka, *Introduction: Language Rights and Political Theory: Context, Issues and Approaches, in* LANGUAGE RIGHTS AND POLITICAL THEORY 1, 16 (Will Kymlicka & Alan Patten eds., 2003).

13.   JEREMY WALDRON, LAW AND DISAGREEMENT 93 (1999).

language. One would, therefore, have expected that legal scholars would be sensitive to the language issue when reflecting on norms of deliberative democracy. Yet it is clear that the issue has attracted minimal attention.[14] Even those rare scholars who have attempted to appropriate deliberative democracy in the service of minority rights have not asked themselves how linguistic minorities could be accommodated under that scheme. For example, Steven Wheately claims that international law can contribute "to the recognition of minority interests and preferences through a deliberative understanding of democracy."[15] Wheatley argues that his concern in the article is "how the deliberative mode accommodates the ethno-cultural minority group"[16] within which he includes linguistic minorities. But nowhere is there an attempt to explain how deliberative democracy will deal with the issue when the dispute is the choice of the language or languages in which the deliberation is to take place. This is an extremely salient question in many parts of the world. Indeed, language issues are at the root of a great deal of conflict and division in many of what Donald Horowitz calls "severely divided societies."[17]

One could imagine explanations for this neglect, at least in relation to American legal scholars, who are by and large the most prominent advocates of, and writers on, deliberative democracy. First, there might be an unstated (and in my view wrong) assumption that American scholars of deliberative democracy need not worry about language issues because there are no language issues in the United States. However, the often heated "English Only"[18] debate in the west and southwest of the country attests to the error of that assumption.[19] The second explanation for scholarly neglect I shall refer to as "arrogance passing

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14. Two recent publications (one on political theory and another on international law) touch on the issue of deliberative democracy in relation to minorities. *See* Alan Patten, *What Kind of Bilingualism?, in* LANGUAGE RIGHTS AND POLITICAL THEORY 296, 310-18 (Will Kymlicka and Alan Patten eds., 2003); Steven Whetley, *Deliberative Democracy and Minorities*, 14 EUR. J. INT'L L. 507 (2003). Kymlicka and Patten raise the language issue in the context of deliberative democracy only in passing. In their introduction to the collection of essays that make up the book just cited they note that the "shift to a deliberative model of democracy...presuppose[s] that people share a common language." *Supra* note 12, at 15. Kymlicka and Patten understand that such presupposition or demand can be "as inherently exclusionary and unjust." *Id.* at 16.

15. Whetley, *supra* note 14, at 508.

16. *Id.* at 508.

17. Donald Horowitz, *Democracy in Divided Societies*, 4 J. DEM. 18, 34 (October 1993); *see also* DONALD HOROWITZ, ETHNIC GROUPS IN CONFLICT (1985).

18. *See* DENNIS BARRON, THE ENGLISH-ONLY QUESTION: AN OFFICIAL LANGUAGE FOR AMERICANS? (1990); LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY (1992)

19. To be sure, there are many Latino scholars and activists that have written on, or raised, the language issue in the United States. *See, e.g.,* Kevin Johnson & George A. Martínez, *Forging our Identity: Transformative Resistance in the Areas of Work, Class, and the Law: Discrimination by Proxy: The Case of Proposition 227 and the Ban on Bilingual Education*, 33 U.C. DAVIS L. REV. 1227 (2000); Juan F. Perea, *Demography and Distrust: An Essay on American Language, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269 (1992). Mainstream scholars, including those who are proponents of deliberative democracy, however, have simply ignored the issue.

itself off as modesty." American legal scholars, like some of their counterparts in other fields, especially political theory, may believe, and often announce explicitly, that the deliberative democracy they develop and defend is meant to apply only to the polity in which they live.[20] This seemingly admirable modesty is actually another face of arrogance—the lack of desire to learn from other polities or engage in useful comparative studies. If these scholars were more open to comparative studies, perhaps they would realize that the United States does in fact have language problems similar to those in other multicultural societies, and the way some of those countries have approached the issue may be instructive.

There is some hope. Surprisingly, the Supreme Court of the United States, traditionally not the most comparativist of our institutions, has (at least some of the Justices have) been making noises about the value of looking at how tribunals in other countries deal with similar problems.[21] But in relation to both the judicial and scholarly departments there is a long way to go before one can say that there is a comparativist outlook concerning cultural, and specifically linguistic, issues.[22]

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20. The position is most famously articulated by John Rawls in relation to the liberalism he defended in his book, *Political Liberalism. See* JOHN RAWLS, POLITICAL LIBERALISM (1993).

21. *See,* Roper v. Simmons, 125 S. Ct. 1183, 1200 (2005) (Justice Kennedy writing for the majority striking down capital punishment for people under 18 years of age as being "cruel and unusual" under the Eight Amendment referred to "the overwhelming weight of international opinion against the juvenile death penalty." He observed that the "opinion of the world community, while not controlling on our outcome, provide(s) respected and significant confirmation for [the Court's] conclusions." Although dissenting from the Court's opinion, Justice O'Connor endorsed such canvassing of foreign and international law when she rejected Justice Scalia's contention "that foreign and international law have no place in our Eight Amendment jurisprudence.); Lawrence v. Texas, 539 U.S. 558, 572-73 (2003) (The majority opinion, written by Justice Kennedy, invalidated a state law criminalizing "homosexual sodomy." In the process the majority opinion cited a 1967 Act of the English Parliament and a 1981 ruling of the European Court of Human Rights that invalidated criminal prohibition of sodomy. The majority opined that these developments in other parts of the world indicated that despite the claims of the supporters of the challenged state law criminal prohibition of homosexual sodomy was not universally accepted within Western civilization.); Atkins v. Virginia, 536 U.S. 304, 311-12, 317 (2002) (Stevens, J., writing for the majority, held that the Eighth Amendment's prohibition of "cruel and unusual punishments" forbids the execution of mentally retarded individuals. For the majority, whether the punishment is cruel and unusual partly depends on the punishment's consistency with "the evolving standards of decency that mark the progress of a maturing society." In concluding that the execution of the mentally retarded is not consistent with the standard of decency of a maturing society, the majority referred to the practice in the European Union and other regions of the world where the practice is overwhelmingly repudiated); Patterson v. Texas, 536 U.S. 984 (2002) (Stevens, J. dissenting from denial of stay of execution); Grutter v. Bolinger, 539 U.S. 306, 344 (2003) (Ginsburg, J., concurring) (citing the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination Against Women to note that while the majority's point that affirmative action programs must have an end point "accords with the international understanding," the U.S has not yet arrived at that point). *See also Constitutional Relevance of Foreign Court Decisions* (C-Span television broadcast, Jan. 13, 2005) (the colloquy between Justices Antonin Scalia and Stephen Breyer at the American University Washington College of Law regarding whether American courts should at times consult foreign precedents and experiences as a means of understanding and interpreting American law that seems to be similar to the foreign law that has generated those experiences and precedents).

22. To be sure, recently there has been some interest among constitutional scholars in com-

This essay attempts to break the silence around these issues by inquiring into a series of interrelated questions: Is linguistic pluralism compatible with deliberative democracy? That is, does the idea of deliberative democracy help us to resolve the question when that question is how one chooses the means of deliberation among many contending languages or how one practices deliberative democracy in a nation-state that is the home of many linguistic groups? If deliberative democracy does not help us resolve one of the most important issues in political and social life in much of the world, should we take deliberative democracy seriously as a worthwhile political project? Perhaps John Rawls's observation about the test of the validity of a theory may be relevant here. Rawls argues that "a theory that fails for the fundamental case is of no use at all."[23] Nothing is more fundamental than the language issue when the question involves deliberative democracy.[24]

Part II gives a brief account of deliberative democracy. It explores how deliberative democracy has emerged as an attractive alternative to what I call "aggregative majoritarianism." Its attraction is due in large part to the fact that deliberative democracy promises a better way to resolve disputes in severely divided societies and superior protection for minorities. But is this model viable in multilingual societies? Part III surveys the various responses—from avoidance to unilingualism to translation—available to deliberative democrats facing language-based disputes. In this section I explore and refute the position that unilingualism is necessary for deliberative democracy, arguing instead that deliberative democracy can be compatible with linguistic pluralism. Parts IV and V discuss the nature and extent of the language disputes which deliberative democracy must address if it is to be relevant to much of the world. In Part VI, I use the notion of "multiple public spheres" developed by the noted political philosopher, Nancy Fraser, to show how deliberative democracy could be constitu-

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parative studies. *See* VICKI JACKSON & MARK TUSHNET, COMPARATIVE CONSTITUTIONAL LAW (1999); NORMAN DORSEN, MICHEL ROSENFELD, ANDRÁS SAJÓ & SUSANNE BAER, COMPARATIVE CONSTITUTIONAL LAW: CASES AND MATERIALS (2003); Symposium, *Comparative Avenues in Constitutional Law*, 82 TEX. L. REV. 1653 (2004). Although one of the articles of the symposium specifically dealt with constitutionalizing democracy in severely divided societies, the language issue was not part of the conversation. *See* Samuel Issacharoff, *Constitutionalizing Democracy in Fractured Societies*, 82 TEX. L. REV. 1861 (2004).

23.   John Rawls, *Kantian Constructivism in Moral Theory*, 77 J. PHIL 515, 546 (1980).

24.   Interestingly, Rawls himself advances a version of deliberative democracy, though he does not indicate how that view can work in a multilingual state. JOHN RAWLS, A THEORY OF JUSTICE 315 (rev. ed. 1999) ("In everyday life the exchange of opinion with others checks our partiality and widens our perspective; we are made to see things from their standpoint and the limits of our vision are brought home to us...The benefits from discussion lie in the fact that even representative legislators are limited in knowledge and the ability to reason. No one of them knows everything the others know, or can make all the same inferences that they can draw in concert. Discussion is a way of combining information and enlarging the range of arguments."). Of course, deliberation also takes place at the level of the adoption of the just basic structure. For Rawls, a just basic structure is one which would be agreed to unanimously after deliberation (id. at 138) by individuals who know no more about themselves or each other than the fact that each would prefer more rather than less of certain "primary goods." *Id.* at 62.

tionalized in linguistically fractured societies. I refer to the constitutional arrangement that I develop and recommend as "linguistic federalism." Finally, Part VII explores some of the practical challenges and implications of constitutionalizing deliberative democracy in linguistically fractured societies.

II.
DELIBERATIVE DEMOCRACY: A SHORT OUTLINE

Before we inquire into the relationship between deliberative democracy and linguistic pluralism, it may be useful to set out a brief statement of what deliberative democracy entails for our purpose here. According to Patten and Kymlicka, "There has been an important shift in contemporary democratic theory from 'vote-centric' to 'talk-centric' theories of democracy."[25] What they refer to as a "vote-centric" theory of democracy could alternatively be called aggregative majoritarianism. Aggregative majoritarianism views the central purpose of democratic politics as providing a procedure (voting in this case) that aggregates the preferences (or interests) of individuals so as to determine which have achieved a majority for purposes of formulating a public policy or enacting legislation. Democracy in the aggregative majoritarian sense does not much concern itself with how those preferences are formed, for those preferences and interests are generally assumed to exist independent of, and prior to, the process itself.

In the last few years the aggregative majoritarian view of democracy has been challenged on empirical and normative grounds. The empirical critique challenges the notion that people's preferences are formed independent of and prior to the process itself. That means democracy should concern itself as much with the process of interest-formation as with the correct aggregation of interests. The normative criticism of aggregative majoritarianism centers on two crucial points. First, critics claim that aggregative majoritarianism cannot supply the necessary democratic legitimacy that would sustain a polity over a long period of time.[26] Because aggregative majoritarianism does not require that (or provide mechanism through which) citizens justify their interests to their fellow citizens, these critics argue that the legitimacy of majoritarian decisions may often be suspect in the eyes of many citizens that happen to be on the losing end. Indeed, the lack of a process through which claims of citizens could be advanced and challenged is likely to lead to decisions that may be based on pure self-interest, prejudice or even ignorance rather than on the basis of fairness and justice.[27] Thus, under this process of democracy, not only is it the case that losers are likely to perceive the outcome as illegitimate, but it is also more likely that the outcome will indeed be unfair and unjust.

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25. Patten & Kymlicka, *supra* note 12, at 13.
26. *See id.* at 12.
27. *See id.*

Second, and closely related to the first normative critique, is the idea that a process that views and treats citizens as mere vessels of interests and democracy as a process of aggregating those interests will not be able to build the necessary interconnectedness and trust among citizens to build a community that will sustain the polity over a long period of time. This critique suggests that democracy is as much about the building and sustaining of a community as it is about ensuring that appropriate procedure is utilized to gather and weigh the judgments and preferences of citizens. In other words, democracy has constitutive as well as instrumental dimensions.

Political theorists have offered deliberative democracy as an alternative to aggregative majoritarianism. Although context is important in the development of and elaboration on deliberative democracy, the central principles of deliberative democracy are summed up in the following statement by Joshua Cohen and Charles Sabel: "At the heart of the deliberative conception of democracy is the view that collective decision-making is to proceed deliberatively – by citizens advancing proposals and defending them with considerations that others, who are themselves free and equal, can acknowledge as reasons."[28] Dialogue, or discourse, as Jürgen Habermas calls it,[29] is, therefore, central to the process of deliberative democracy. This is viewed as attractive for a number of reasons. First, as a process that requires a high degree of reflection and exchange among citizens, deliberative democracy is likely to orient politics towards identifying and elaborating on the common good.[30] Second, the requirement that outcomes be supported through reasoned and morally justifiable arguments ensures that outcomes of the political process will be (and will be viewed as) legitimate. As Seyla Benhabib argues, "[L]egitimacy in complex democratic societies must be thought to result from the free and unconstrained public deliberation of all about matters of common concern."[31] Legitimacy here has both a social and a conceptual aspect. Legitimacy could refer to the public acceptance of an institution of social regulation, or it could refer to a decision that is meant to bind it. This is legitimacy as a sociological fact. Alternatively, institutions or decisions may be said to be legitimate to the extent that those decisions or institutions have satisfied the formally accepted criteria of appraisal such as procedural fairness. This is what I refer to as the conceptual dimension of legitimacy.

What constitutes reasoned argument? Jürgen Habermas has offered one version of the answer to that question: "that no force except that of the better argument is exercised; and that, as a result, all motives except that of the coopera-

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28.   Joshua Cohen & Charles Sabel, *Directly-Deliberative Polyarchy*, 3 EUR. L.J. 313, 327 (1997). *See also* Cohen, *supra* note 4, at 22 ("[O]utcomes are democratically legitimate if and only if they could be objects of a free and reasoned agreement among equals.").

29.   *See* HABERMAS, *supra* note 4.

30.   *See supra* note 11.

31.   Seyla Benhabib, *Toward a Deliberative Model of Democratic Legitimacy, in* DEMOCRACY AND DIFFERENCE: CONTESTING THE BOUNDARIES OF THE POLITICAL 68 (Seyla Benhabib ed., 1996).

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tive search for truth are excluded."[32] One could derive three conditions of "reasonableness" from Habermas' observation. First, discourse cannot be reasoned unless discoursants accord each other mutual respect and treat one another as equal dialogue partners. Second, an aspect of this respect is that citizens who deliberate "offer reasonable, morally justifiable arguments to each other."[33] Third, the better or the more reasonable argument is likely to win only if the deliberators are provided with equal material resources.[34]

To summarize, deliberative democracy has the following features: It is procedural in nature.[35] The purpose of the process is to ensure that collective decision-making is conducted in a context in which citizens are required to engage one another in a free and unconstrained deliberation supplying morally justified and reasoned arguments for the proposals and interests that they wish to promote. Decisions made in such a manner are likely to be accepted as legitimate by the losers to the extent that they feel their views and claims received fair consideration from their fellow citizens, who have treated them as free and equal dialogue partners. Put simply, such a process may be considered as essential for the legitimacy of the decisional outcomes and for cultivating greater unity and solidarity among citizens.

Deliberative democracy as outlined above should be attractive to minorities, especially those in severely divided or fractured societies. A process requiring collective decisions to be made through a deliberative process where citizens give reasoned and morally justifiable arguments for their claims, choices and proposals is more likely to give such minorities the opportunity to influence the majority through the process of participation. What minorities cannot gain through the ballot box they may be able to achieve through the process of transforming the views and judgments of the majority of their fellow citizens. "Voice, rather than vote, is the vehicle of empowerment."[36] This is especially so in fractured societies, whether the fracture is by race, ethnicity, religion, etc. Indeed Steven Whetley makes the argument that, in relation to international law,

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32. JÜRGEN HABERMAS, LEGITIMATION CRISIS 108 (Thomas McCarthy trans., 1975). For a more complete statement of Habermas's view *see* HABERMAS, *supra* note 4. *See also* Jürgen Habermas, *Discourse Ethics: Note on a Program of Philosophical Justification, in* THE COMMUNICATIVE ETHICS CONTROVERSY 60, 90 (Seyla Benhabib & Fred Dallmayr eds., 1990) ("[O]nly those norms can claim to be valid that meet (or could meet) with the approval of all concerned in their capacity as participants in a practical discourse.").

33. Lynn M. Sanders, *Against Deliberation*, 25 POL. THEORY 347, 348 (1997).

34. "[T]he absence of material deprivation is a precondition for free and unconstrained deliberation." JOSHUA COHEN & JOEL ROGERS, ON DEMOCRACY: TOWARD A TRANSFORMATION OF AMERICAN SOCIETY 157 (1983).

35. Indeed, Habermas specifically refers to deliberative democracy as a "procedural model of democracy." *See* HABERMAS, *supra* note 4, at 288 ("After comparing different substantive models of democracy, I develop a procedural concept of democratic process.") *See also* JÜRGEN HABERMAS, THE INCLUSION OF THE OTHER: STUDIES IN POLITICAL THEORY (Ciaran Cronin & Pablo DeGreiff eds., 1998).

36. Simone Chambers, *A Critical Theory of Civil Society, in* ALTERNATIVE CONCEPTIONS OF CIVIL SOCIETY 90, 99 (Simone Chambers & Will Kymlicka eds., 2001).

deliberative democracy will greatly contribute to the recognition of minority interests and preferences.[37] Greater deliberation, which requires greater representation in the institutions of deliberation, seems to be a good thing for democracy and an even better process for minorities who have very little chance of winning the game of aggregative majoritarianism, for they will often be outvoted and outbid.[38] Simple aggregative majoritarianism in severely divided societies, to quote Donald Horowitz, "is not a solution; it is a problem, because it permits domination, apparently in perpetuity,"[39] for such elections "produce ethnic exclusion."[40] So, when both the UN Declaration on Minorities and the UN Commission on Human Rights suggest that the issue of minorities will only be resolved "within a democratic framework,"[41] they might best be understood as referring to a more inclusive and deeper form of democracy, such as deliberative democracy, than simple majoritarianism.

As Patten and Kymlicka observe, when the issue that divides groups in a nation-state is language, the "shift to a deliberative model of democracy makes the language issue even more central and also more contested."[42] Yet, those who recommend deliberative democracy as a more appropriate process of opinion-formation and decision-making have not even considered this conflict, let alone provided answers to it. If minority empowerment is to come through a "talk-centric" process, in which language should that talk take place?

III.
THE DELIBERATIVE DEMOCRATS' RESPONSE TO LINGUISTIC PLURALISM

A. Avoidance as a Response

There are a number of ways in which those committed to deliberative democracy could respond to the challenges of linguistic multiplicity. First, the deliberative democrat might avoid the challenge altogether by simply denying that language is properly an issue for deliberative democracy. This categorical or

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37. Whetley, *supra* note 14.

38. For the idea that cultural minorities would be outbid and outvoted (in their attempt to maintain and develop their culture) in the context of political majoritarianism and economic laissez faireism see WILL KYMLICKA, LIBERALISM, COMMUNITY AND CULTURE 182-205 (1989). *See also* Alamin M. Mazrui, *Maintaining Linguiodiversity: Africa in the Twenty-first Century, in* LANGUAGE IN THE 21ST CENTURY 99, 102 (Humphrey Tonkin & Timothy Reagan eds., 2003) ("Those who lose their language seldom do so as a matter of choice: Rather, they often capitulate to 'superior' power, in its coercive or hegemonic form.").

39. Horowitz, *Democracy in Divided Societies, supra* note 17 at 29.

40. *Id.* at 28.

41. *See United Nations Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities*, G.A. Res. 135, U.N. GAOR, 47th Sess., U.N. Doc. A/RES/47/135 (1992); *Ways and Means of Overcoming Obstacles to the Establishment of a Democratic Society and Requirements for the Maintenance of Democracy*, E.S.C. Res. 60, U.N. ESCOR, Comm'n on Human Rights, 51st Sess., at preamble, U.N. Doc. E/CN.4/RES/1995/60 (1995).

42. Patten and Kymlicka, *supra* note 12, at 15.

"jurisdictional" approach views the language issue as being prior to and in a different category from the issue of deliberative democracy. According to this view, only after the language issue is settled would the work of deliberative democracy begin. This approach is remarkably similar to the aggregative majoritarianist view that individual preferences are of no concern to democracy, because they are prior to or independent from it.

Another manner of avoidance, advocated by Bruce Ackerman promotes "the path of conversational restraint."[43] According to Ackerman, when we disagree "about one or another dimension of the moral truth" we should simply take those ideals "off the conversational agenda."[44] The value of this bracketing, or conversational restraint, is apparently to ensure that we use dialogue "for pragmatically productive purposes: to identify normative premises all political participants find reasonable (or, at least, not unreasonable)."[45] But this avoidance by bracketing seems rather unhelpful in the context of disputes over language. As I shall show later, the language issue can never be bracketed, at least not for long. The dispute or disagreement has to be resolved one way or another; either a language is chosen or imposed by a dominant group, or, the disagreement leads to a conflict or the breaking up of the territorial unit.

It may be argued that the sorts of issues that Ackerman recommends bracketing are ethical and moral questions, not issues such as what language we should use to start the conversation. After all, we have to engage in conversation to even know what moral and ethical issues divide us. But if that is the position, then the bracketers owe us an explanation as to what it is that they will do when a disagreement over language as intense (and often even more intense) as any moral or ethical issue, such as whether abortion is murder, arises. In any case, the language issue raises significant moral or ethical questions, such as whether the death of a language is the death of the culture of the group speaking that language, whether treating an individual or a group with equal concern and respect[46] entails respecting their language and protecting it from linguistic death, and the like, and whether there are morally permissible ways for a linguistic group to engage in what can be referred to as "linguistic self-defense."[47]

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43. Bruce Ackerman, *Why Dialogue?*, 86 J. PHIL 5, 16 (1989).

44. *Id.* at 16.

45. *Id.* at 17. *But cf* AMY GUTMAN & DENNIS THOMPSON, DEMOCRACY AND DISAGREEMENT (1996).

46. I borrow the phrase "equal concern and respect" from Ronald Dworkin. *See* RONALD DWORKIN, TAKING RIGHTS SERIOUSLY 180 (1977) ("We might say that individuals have a right to equal concern and respect in the design and administration of the political institutions that govern them.") "Government must not only treat people with concern and respect, but with equal concern and respect." *Id.* at 272-73.

47. The notion of linguistic self-defense was developed by George Fletcher. Fletcher developed the idea of linguistic self-defense as a way to justify regulatory schemes such as "English Only" that are meant to protect the language of the majority from threats coming from organized minorities. *See* George Fletcher, *The Case for Linguistic Self-Defense, in* THE MORALITY OF NATIONALISM 324, 333-35 (Robert McKim & Jeff McMahan eds., 1997).

Avoidance as a response in both its jurisdictional and bracketing sense makes deliberative democracy less than useful as a process of resolving disagreements in much of the world where language disputes are the most common and the most salient. From the Baltics to the Balkans, from South Asia to Southern Africa, from North America to the Near East, the issue of how to constitutionalize democracy in linguistically fractured societies is the most urgent and most difficult issue.[48] When we bracket (or use jurisdictional exit to avoid) one of the most important issues for much of the world, we render deliberative democracy useless.

B. Unilingualism as a Prerequisite for Deliberative Democracy

1. The Functionalist Argument

While those deliberative democrats who practice avoidance may want to bracket the issue of multilingualism or push it as being beyond the proper jurisdiction of deliberative democracy, others may assert that deliberative democracy in fact requires a common language as a functional prerequisite for implementation of the theory. At a minimum, the argument goes, deliberative democracy requires that people are able to engage one another linguistically,[49] thus one who accepts deliberative democracy must reject multilingualism. But this position begs two interrelated questions: First, assuming that unilingualism is a prerequisite for deliberative democracy, how does one get to choose the language of deliberation among many possible candidates? Second, does deliberative democracy suggest ways of dealing with the many unchosen languages and linguistic nationalisms in the particular polity?[50] At closer look, it seems that the unilingual response is similar to the avoidance response. It succeeds only by avoiding major questions that are entailed by the idea of choosing one language as the only means of deliberation. Nevertheless, deliberative democrats who may view unilingualism as essential to the deliberative process have powerful

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48.   Some multiethnic societies that have been traumatized by ethnic violence have tried their own form of avoidance. Rwanda, which was the scene of the most chilling genocide since WW II, is apparently attempting to deal with the consequences of that terrible event by denying that ethnicities in fact exist in Rwanda. The Rwandan government has "wiped out the distinctions [between Hutus and Tutsis] by decree." One individual was quoted as saying that "There is no ethnicity here. We are all Rwandan...Ethnicity is bad. I want it to go away." *See* Marc Lacey, *A Decade After Massacres, Rwanda Outlaws Ethnicity*, N.Y. TIMES, April 9, 2004, at A3. The idea that ethnicity could be outlawed by decree or even ignored as serving legitimate political functions is hard to take seriously. Ethnicity could be suppressed, but it can neither be decreed out nor successfully ignored. As Donald Horowitz has observed, the idea that "ethnicity performs no legitimate political functions" and that ethnic affiliations "can simply be written out of the political process...is unwise." Horowitz, *Democracy in Divided Societies, supra* note 17, at 32.

49.   For a detailed argument of this position *see infra* text accompanying notes 71-76 .

50.   For a description of linguistic nationalism *see* Mazrui, *supra* note 38, at 105.

allies such as J.S. Mill and Brian Barry,[51] who have advanced the view that de-
mocracy will be hard to sustain in any form in a nation-state unless a common
language is spoken in the polity.

Collective deliberation assumes at a minimum that participants have access
to the thought-processes and concerns of fellow participants of the enterprise.
Thus, "Linguistic diversity can be a serious barrier to the full flourishing" of de-
liberative democracy, for "[i]f citizens cannot understand one another, or if they
seek to communicate only with co-linguists, then democratic politics will inevi-
tably be compromised."[52] Dieter Grimm makes a similar functionalist argument
in relation to the European Union. He contends that there cannot be a European
community of participation or deliberation. According to Grimm, this is because
European deliberative democracy assumes a European public sphere which in
turn assumes a European people, and there cannot be a European people without
a common European language.[53] Under this view, language constitutes the very
same public that makes deliberative democracy possible. Grimm's functionalist
argument, however, is accompanied by a neutralist view of language. Under this
view, the language of deliberation does not have any impact on the substance of
the deliberation. Language is viewed as a neutral transmitter of thoughts and
ideas.

I take issue with the idea that language is a neutral transmitter of content
and that the substance and process of deliberation is not greatly affected by what
language is employed in the deliberative process. Language is "cultural soft-
ware," to borrow a phrase from J.M. Balkin[54] in another context. It is a medium
of communication, but what it expresses can never be totally separable from
how it expresses it.[55] Just as software, the technological "language," puts some

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51.   *See* discussion *infra* text accompanying notes 71-76.

52.   Alan Patten, *Political Theory, supra* note 8, at 701. *See also* Mark S. Nadel, *Customized
News Services and Extremist Enclaves in Repubic.com*, 54 STAN. L. REV. 831, 836-37 (2002) (book
review) ("Two types of common experiences are particularly important for enabling individuals to
be part of a community: a common language to communicate and awareness of important names,
places, events, etc., and significant details and stories associated with them. Having a common lan-
guage is probably the most important element for fostering community.").

53.   Dieter Grimm, *Does Europe Need a Constitution?*, 1 EUR. L. J. 282, 295 (1995).

54.   J.M. BALKIN, CULTURAL SOFTWARE: A THEORY OF IDEOLOGY, at ix (1998). ("To be a
person is to be constituted by a particular kind of cultural information that exists at a particular point
in time. . . I call this cultural information cultural software.").

55.   The Canadian Supreme Court made the point in *Ford v. Quebec (Attorney General)* [1988]
2 S.C.R. 712, 716 (Can.) ("Language is so intimately related to the form and content of expression
that there cannot be true freedom of expression by means of language if one is prohibited from using
the language of one's choice. Language is not merely a means or medium of expression; it colours
the content and meaning of expression.") The great novelist Jorge Luis Borges was once asked
whether or not he was influenced by the Spanish language. He responded this way:

> I am inseparable from the Spanish language. My dreams, my aspirations as a writer
> are formed in Spanish. It is no exaggeration to say that the man I am would not 'be'
> who he is without Spanish. The writer I have become is unthinkable without the shape
> it has been given by the great traditions of Latin culture.

Interview by Sonia Moria with Jorge Luis Borges, Buenos Aires, Argentina (May 1985), *quoted in*

constraints on what message will be disseminated and how it will be disseminated,[56] human language also puts constraints on what we are able to think about, what we are able to imagine, and how we will communicate it.[57] Therefore, it seems misguided to argue that the deliberative process and the substance of deliberation are not seriously affected by the use of one language over another for deliberation. Likewise, I am not persuaded by the argument that groups whose languages are not used in the deliberative process are not losing much.[58]

There is another issue related to the neutrality of language argument that we should consider, if only to dispose of it quickly—the notion of state neutrality. The argument runs this way: the best response to linguistic pluralism is for the state to treat the multiplicity of languages the way it treats or should treat religious pluralism, the state ought not establish an official culture. While language neutralism attempts to reassure "minority" language-speakers that the use of a national or official language would not materially affect their interests, either in relation to the process or the substance of deliberation, state neutralism makes the claim that in choosing one language as the means of deliberation the state is not endorsing a particular cultural group over others within the polity. The state is just as neutral towards cultures as it is towards religions. This view has been greatly encouraged by international and regional human rights documents that consider the right to one's language as being essentially the same as one's right to profess and practice one's religion. The state is simply prohibited from discriminating on the basis of language-use as it is on the basis of religion.[59] If the state exercises what I have elsewhere called "negative toleration"[60] towards linguistic groups that it is meant to exercise towards religious groups, then the state would have acted neutrally among linguistic groups.

Cornell & Bratton, *supra* note 10, at 676.

56. *See* LAWRENCE LESSIG, CODE AND OTHER LAWS OF CYBERSPACE (1999).

57. Avishai Margalit and Joseph Raz make a similar argument, but in their case about culture generally rather than about language specifically. They argue that "[f]amiliarity with a culture determines the boundaries of the imaginable." Avishai Margalit & Joseph Raz, *National Self-Determination*, 87 J. PHIL. 439, 449 (1990).

58. The neutrality of language argument that I sketched in this paragraph is different from another notion of language neutrality that one encounters in the literature and one that I shall not pursue here. Former colonies of European powers, mainly in Africa and Asia, ended up adopting the language of the former colonial powers as the official language (or as an official language) when they gained their independence or shortly thereafter. This is not because more people spoke the colonial language than one of the indigenous languages, hence facilitating the deliberative or communicative process. Rather, this was because the adoption of the colonial language was viewed as "neutral" among the contending linguistic groups thus reducing the possibility of language-based conflicts that would arise from symbolic injury that those whose languages lost out in the struggle for official recognition are likely to feel. Neutrality here is not to content, but to status. *See* HOROWITZ, ETHNIC GROUPS IN CONFLICT, *supra* note 17, at 219-24.

59. *See* G.A. Res. 2200, 21 U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966),, at art. 2(1); African Charter on Human and Peoples' Rights, June 27, 1981, art. 2, 1520 U.N.T.S. I-26363; American Convention on Human Rights, Nov. 22, 1969, art. 1(1), 1144 U.N.T.S. 17955.

60. *See* Addis, *On Human Diversity and the Limits of Toleration, in* ETHNICITY AND GROUP RIGHTS 112, 119 (Ian Shapiro & Will Kymlicka eds., 1997).

As others have argued, this claim is rather unconvincing.[61] The choice of one language among many can't but be at least a partial (albeit indirect) endorsement of the culture of the group that speaks the chosen language over other linguistic groups. To the extent that groups define who they are, at least partly, through their language,[62] the choice of another language over theirs cannot but be seen as a symbolic denigration of them and their culture.[63]

Some may think that they have not endorsed a particular culture or group because they do not provide official status, either constitutionally or statutorily, to the chosen language of deliberation. There is no official or formal endorsement of the language, even though the language has clearly become the official medium of the polity. The United States, for example, does not provide either constitutionally or statutorily that English is the official language of the Republic,[64] unlike most countries whose constitutions declare one language as the official language.[65] But it seems to me not to make much practical difference that

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61.   *See* WILL KYMLICKA, STATES, NATIONS AND CULTURES 27 (1997); WILL KYMLICKA, FINDING OUR WAY: RETHINKING ETHNOCULTURAL RELATIONS IN CANADA 26-29 (1998); Veit Bader, *Religious Pluralism: Secularism or Priority for Democracy?* 27 POL. THEORY 597, 600 (1999); Brian Walker, *Modernity and Cultural Vulnerability: Should Ethnicity be Privileged?* in THEORIZING NATIONALISM 141, 154 (Ronal Beiner ed., 1999); Patten, *Political Theory and Language Policy, supra* note 8, at 696; Patten, *Liberal Neutrality and Language Policy, supra* note 8, at 364-73; Fernand de Varennes, *Language and Freedom of Expression in International Law*, 16 HUM. RTS. Q. 163 (1994); and BRIAN BARRY, CULTURE & EQUALITY: AN EGALITARINA CRITIQUE OF MULTICULTURALISM 107 (2001). My view of the issue has been set out in an earlier article. *See* Addis, *supra* note 10, at 748-50.

62.   "For many people, particularly for those in linguistic minorities, language is a central and defining feature of identity." Patten, *Political Theory and Language Policy, supra* note 8, at 697 (citations omitted). For the most sustained current argument of the centrality of language in the life and culture of communities see KYMLICKA, LIBERALISM, COMMUNITY AND CULTURE *supra* note 38. But the centrality of language in constituting distinct peoples and cultures was understood quite well by some of the greatest writers of the eighteenth century. *See, e.g.*, Johann Gottfried Herder, *Essay On the Origin of Language, in* ON THE ORIGIN OF LANGUAGE 87 (John H. Moran & Alexander Gode trans., Frederick Ungar Publ'g Co. 1966) (1772); Jean-Jacque Rousseau, *Essay On the Origin of Languages, in* ON THE ORIGIN OF LANGUAGE 5 (John H. Moran & Alexander Gode trans., Frederick Ungar Publ'g Co. 1966) (1772). The work is cited in George P. Fletcher, *The Storrs Lectures: Liberals and Romantics at War: The Problem of Collective Guilt*, 111 YALE L. J. 1499, 1510 (2002).

63.   Referring to the intense conflict over bilingualism in California between Latinos and "Anglos", Kevin Johnson and George Martínez observe that "Anglos and Latina/os see language as a fight for status in U.S. society." Johnson & Martínez *supra* note 19, at 1249. *See also* Rachel F. Moran, *Bilingual Education as a Status Conflict*, 75 CAL. L. REV. 321, 341-45 (1987); HOROWITZ, ETHNIC GROUPS IN CONFLICT, *supra* note 17, at 219-24.

64.   The High Commissioner on National Minorities of the Organization for Security and Cooperation in Europe reports that of "the 51[member] states returning the questionnaire, three (Hungary, Sweden, and [the] United States of America) responded that they had no official or state language..." High Commn'r on Nat'l Minorities, *Report on the Linguistic Rights of Persons Belonging to National Minorities*, O.S.C.E. report, at IV(2), Mar. 1, 1999.

65.   *See* KUSHTETUTA [Constitution] art. 14(1) (Alb.) ("The official language in the Republic of Albania is Albanian). The Algerian Constitution provides that "the national and official language is Arabic." LA CONSTITUTION DU 28 NOVEMBRE 1996 art. 3 (Alger.); Bangladesh's Constitution provides that "the State language of the Republic is Bangla." BANGLA. CONST. art. 3; The Constitution of Brazil provides that "Portuguese is the official language of the Federal Republic of Brazil." CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL art. 13 (Braz.); Both Egypt's and Yemen's

the language has assumed "official" status through the support of other institutional means rather than through a piece of legislation or constitutionally. In each case, the state is monolingual. In any case, in relation to the United States, it is the assumption that English has the de facto official status that has inspired movements such as "English Only" and "Official English" to campaign for turning the *de facto* status into a *de jure* one.[66] Indeed, as I noted earlier, many states in the United States have constitutional or statutory provisions declaring English to be the official language of the state.[67]

2. The Trust Argument

Common language also performs an arguably important symbolic role in deliberative democracy. For a deliberative process to function properly and effectively there has to be trust among citizens. The notion of trust here refers to the confidence that citizens or groups of citizens have that other citizens or groups of citizens will treat them reasonably well, that they "will not waylay or cheat" them, that they will be forthcoming in exchanges with them, and that they will consider them as partners in a common enterprise of building a community.[68] A society where there is little trust, or little "social capital" among citizens, to borrow a phrase from James Coleman, is one that is in some trouble.[69]

Constitutions declare that Islam is the religion of the state and Arabic its official language. EGY. CONST. art. 2, YEM. CONST. art. 2. As I mentioned earlier, France has constitutionalized French as "the language of the Republic." LA CONSTITUTION DE 1948 art. 2 (Fr). The Indonesian Constitution provides that "the official language shall be the Indonesian language." INDO. CONST. art. 36; Poland provides in its constitution for the official status of Polish in the Republic. KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ art. 27 (Pol.); and the Russian Federation's Constitution declares: "The state language of the Russian Federation throughout its territory shall be the Russian language." RUSS. CONST. art. 68(1). In a gesture towards identity politics, Ireland's Constitution recognizes Irish as "the first official language" even though only "33.6 percent of the population of Ireland professes fluency in the Irish languages." Case 379/87, Groener v. Minister for Education and City of Dublin Vocational Education Committee, E.C.R. 3967 (1990).

As noted earlier, perhaps not surprisingly, many former colonies of France and United Kingdom have apparently chosen the language of the colonial power, rather than one of the local languages, as the official language of the state. Congo, Djibouti, Guinea, Ivory Coast, Mali, Niger, Senegal, Togo, have adopted French as the official language of the state. Zambia has made English its sole official language and a few other former British colonies such as Kenya and Nigeria have adopted English as one of the official languages of the state.

66.   For a description of English Only or Official English movements, see Addis, *Cultural Integrity, supra* note 10, at 732 n.36.

67.   *See infra* note.110.

68.   Philip Pettit, *The Cunning of Trust*, 24 PHIL. & PUB. AFF. 202, 204 (1995).

69.   JAMES COLEMAN, FOUNDATIONS OF SOCIAL THEORY 300-21 (1990). *See also* James S. Coleman, *Social Capital in the Creation of Human Capital*, 94 AM. J. SOC. S95, S100-S101 (1988) ("Social capital...comes about through changes in relations among persons that facilitate action. . [S]ocial capital...exists in the *relations* among persons. [A] group within which there is extensive trustworthiness and extensive trust is able to accomplish much more than a comparable group without that trustworthiness and trust.") (emphasis in original). For an interesting conceptual history of the notion of "social capital," see James Farr, *Social Capital: A Conceptual History*, 32 POL. THEORY 6 (2004).

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Philip Pettit is right in describing trust as "a precious if fragile commodity in so-cial and political life [that] [i]nstitutional policy makers and designers ignore . . . at their peril."[70]

Trust in this sense is an important ingredient in the effectiveness of a delib-erative process. If there is no trust there is unlikely to be good faith engagement among citizens about a whole host of issues over which there is a need to delib-erate. Brian Barry has pressed this argument. "As far as linguistic homogeneity is concerned," he argues, "we can again emphasize the relation between com-munication and trust, and press the view that, for democratic politics to work, the citizens must be able to communicate with one another, and must have ac-cess to the same forums of political debate."[71] The trust argument was made even more forcefully long ago by John Stuart Mill. Mill thought that "[f]ree in-stitutions [were] next to impossible in a country made up of different nationali-ties," especially if the different nationalities spoke different languages.[72] If there is no "fellow-feeling" among a people, "especially if they read and speak differ-ent languages, the united public opinion, necessary to the working of representa-tive government, cannot exist."[73] For Mill, as for Barry, speaking the same lan-guage is to be regarded as likely to engender the trust that would be needed for deliberative democracy to work in a particular territorial unit.[74]

Actually, both Mill and Barry make an even stronger argument by suggest-ing that democracy itself may not be possible without unilingualism or monolin-gualism.[75] They are not alone. B. Barère, an advocate of monolingualism in

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70.   Pettit, *supra* note 68, at 225.

71.   Brian Barry, *Self-Government Revisited, in* THEORIZING NATIONALISM 247, 265 (Ronald Beiner ed., 1999). Trust has also been described as "the cement of our society." F.H. Buckley, *Lib-eral Nationalism*, 48 UCLA L. REV. 221, 242 (2000).

72.   JOHN STUART MILL, CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT 309 (Gateway ed., Henry Regnery Co. 1962) (1861).

73.   *Id.* at 309.

74.   Those that offer the trust argument would more than likely concede that speaking the same language is not a sufficient ground for cultivating the necessary trust within a community. One could cite numerous examples where groups that speak the same language do not particularly display a great deal of trust towards one another for various reasons, from religious differences to racial and class divisions. The relationship between blacks and whites in the United States is a good example. Although the two groups speak the same language, at least some version of it, trust is not found in abundance in the relationship between the two groups. *See* Addis, On Human Diversity, *supra* note 60, at 116-7. To some extent, one could say the same thing about gender gaps or differences. There-fore, the trust argument must be reformulated to mean that speaking the same language is a neces-sary, though not sufficient, condition for the effective functioning of deliberative democracy. "[E]ven two people who have grown up in the same home may find that gender and family dynamics may frustrate effective conversation." Nadel, *supra* note 52, at 837 n.22. (citing DEBORAH TANNEN, I ONLY SAY THIS BECAUSE I LOVE YOU: HOW THE WAY WE TALK CAN MAKE OR BREAK FAMILY RELATIONSHIPS THROUGHOUT OUR LIVES (2001); DEBORAH TANNEN, YOU JUST DON'T UNDERSTAND: WOMEN AND MEN IN CONVERSATION (1990)).

75.   In addition to the works cited above, *see also* BRIAN BARRY, CULTURE & EQUALITY: AN EGALITARIAN CRITIQUE OF MULTICULTURALISM 227 (2001). Barry refers to Belgium as a "micro-cosm of the European Union, which is commonly accused of suffering from a 'democratic deficit.' The charge is certainly sustainable if the model of democratic polity is taken to be one in which there

eighteenth century France when the Jacobins sought to make Parisian French the national language, expressed what he saw to be the importance of monolingualism for the survival and prosperity of democracy this way:

> The monarchy had its reasons for being like the Tower of Babel, but in a democracy, leaving citizens ignorant of the national language and incapable of checking those in power is treason to the father land (*la patrie*); it is to misunderstand the promise of the printing press, each printer being an elementary teacher of language and law . . . In a free people, language must be one and the same for all.[76]

For my purpose here, however, I need not worry about the stronger (broader) version of the argument as represented by Mill, Barry and Barère. Of course, if the stronger version of the argument is correct then by definition the narrower version must be true as well. There cannot be deliberative democracy if there isn't democracy at all. But as I noted earlier, my purpose here is to inquire into the relationship between deliberative democracy and multilingualism, a narrower question, than the larger issue of whether democracy itself, in whatever way it is conceived, is in fact possible in polities that are defined by official multilingualism.

C. Deliberative Democracy and Linguistic Pluralism: Is Translation the Answer?

A third response to linguistic pluralism, distinct from avoidance or unilingualism, would suggest that deliberative democracy and multilingualism can accommodate one another through an extensive process of translation. Printed matters could be distributed in the various languages of the polity and formal deliberations could be simultaneously translated. If this were possible, deliberative democracy would clearly be consistent with linguistic pluralism, at least in relation to formal representational institutions. Supporters of this position may point to national[77] and international[78] examples to suggest that translation may be used to cultivate linguistic pluralism and deliberative democracy simultane-

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is a single comprehensive realm of discourse giving rise to a unified 'public opinion.'" *See id.* Will Kymlicka makes a similar argument to those made by Barry and Mill. *See* Will Kymlicka, *Territorial Boundaries: A Liberal Egalitarian Perspective, in* BOUNDARIES AND JUSTICE: DIVERSE ETHICAL PERSPECTIVES 249, 268-70 (David Miller & Sohail H. Hashmi eds., 2001). So does Philippe Van Parijs. Taking his cue from Mill, Van Parijs argues that there can't be "viable democracy without linguistically unified demos." Philippe Van Parijs, *Must Europe be Belgian? On Democratic Citizenship in Multilingual Polities, in* THE DEMANDS OF CITIZENSHIP, 236 (Catriona McKinnon & Iain Hampsher eds., 2000).

76. The quote is from B. Barère. *See* R. ANTHONY LODGE, FRENCH: FROM DIALECT TO STANDARD 210-214 (1993) *(cited in* Mitchell Cohen, *Embattled Minorities: An Introduction*, DISSENT, Summer 1996, at 7).

77. Canada is a good example, at least in relation to English and French, the two official languages.

78. As I shall indicate later, the United Nations and the European Union have extensive translation programs, making all documents and formal utterances available through one of the designated official languages. In the case of the European Union, this means that official communication is conducted in all of the languages of the member states.

ously. Unfortunately, translation is not an option for most of the world. Deliberative democrats, who depend on extensive translation systems for implementation, write the theory out of usefulness for much of the world. This is so for three significant reasons. First, in much of the world, especially in Africa (and to some extent Asia), a nation-state has not two or three, but dozens of languages (language groups). Ethiopia, for example, has numerous languages, estimated to be between seventy and eighty.[79] Under those circumstances, it would be utterly implausible to think of making deliberation available in all of the languages that exist in the nation-state. Most of the countries in the developing world will be economically unable to provide translation in two or three languages, let alone in dozens of languages. Indeed, the cost of translation might in fact be prohibitive even for developed countries if the number of languages exceeds three or four. Second, even if the number of languages in a country is initially manageable from the point of resources, in the long run any perceived inefficiencies in the system of translation may result in a deficit in the legitimacy of the deliberative process itself.[80] Third, even if the translation system is successful, it will be successful only in relation to the elites who work in or are part of the governmental process. Translation will preserve deliberation as an elite-dominated process, to the extent that only deliberations in formal institutions are translated.[81]

The European Union may serve as an apt framework for thinking about potential problems with translation. The Union is constituted by states which, for the most part, are not ready to abandon their national languages.[82] The fact that

79. *See* Adeno Addis, *Individualism, Communitarianism, and the Rights of Ethnic Minorities*, 67 NOTRE DAME L. REV. 615, 667 (1992); Thomas Bloor & Wondwosen Tamrat, *Issues in Ethiopian Language Policy and Education* 17 J. OF MULTILINGUAL AND MULTICULTURAL DEVELOPMENT 321, 322-3 (1996).

80. Legitimacy could have two dimensions: normative and empirical. A process could be illegitimate because it does not adhere to certain principles or norms (moral or otherwise) that such a process is supposed to possess. But a process' legitimacy could also be a matter of social acceptance, attitudes and perceptions of the people whose lives it is meant to regulate. Often, the perception and attitudes of those individuals are as important for the legitimacy of the process as are the formal attributes that are supposed to define the process Frank Michelman draws a similar distinction. *See* Frank Michelman, *Human Rights and the Limits of Constitutional Theory*, 13 RATIO JURIS 63, 64-5 (2000). When I talk about legitimacy here I mean to refer to the empirical aspect, to the perceptions and attitudes of people towards deliberative democracy because of the belief (and perhaps reality) that it is simply inefficient.

81. It may be that in the long-run technologies, such as translation software, will advance far enough to enable translations into many languages in a reasonably inexpensive way and to make deliberation available outside elite-dominated institutions. But we are not there yet and the "long-run" may indeed be very long. Jacques Maurais may well be right when he observed: "It is hardly realistic to believe that technology will help solve the linguistic problems of the world, either in the short or medium term, or even in the long term." Jacques Maurais, *Towards a New Global Linguistic Order?, in* LANGUAGES IN A GLOBALISING WORLD 13, 31 (Jacques Maurais & Michael A. Morris eds., 2003). (citations omitted). Maurais further observes: "Our personal computers will not be replaced by R2D2 (Star Wars droid) clones tomorrow. Automatic translation still continues to confront numerous difficulties, the least of which is not semantics." *Id.* at 31.

82. When France came up with an initiative in 1995 "to reduce the number of working languages in the [EU] institutions [it] provoked an angry rejection, particularly from Greece." See Sue

there are many official languages and that documents have to be reproduced in those languages and that interpretive mechanisms have to be provided for the speakers of the various languages have often affected the efficiency of the process, at least it is perceived to have had that effect.[83] As I mentioned above, the legitimacy of deliberative democracy gets tied to the perceived inefficiency resulting from the use of multiple languages in the deliberative process. The inefficiency (and legitimacy) argument is even more powerful in relation to less developed countries that can ill-afford to provide the necessary resources for such translation and inter-group discourse. But it is in these very countries where the language issue is raised more frequently and more intensely. If the European Union poses some challenge to deliberative democracy, the multilingual societies of Africa and Asia seem to deal a crippling blow to it.

One way of responding to the efficiency and legitimacy arguments is to say that democracy itself is often inefficient and that it is perceived to be as such by citizens, but the deliberative democrat would clearly not advocate dispensing with democracy on account of its perceived or actual inefficiency. Indeed, deliberative democracy, one may assume, would require significantly more resources than aggregative majoritarianism (or interest group politics), because it requires citizens to engage fellow citizens and to offer reasoned arguments to develop the public good. Another response to the concern that a legitimacy deficit will flow from attempts to engage in deliberation through many languages is to suggest that there would perhaps be just as great, if not greater, of a legitimacy deficit in a state of unilingualism. Linguistic minorities who feel that an important aspect of their identity is excluded from the process are likely to view the system with great suspicion and may even advocate radical measures to challenge it, including perhaps even separation. Under this account, the inefficiencies that flow from deliberation in multiple languages are far more tolerable than the alternative, the likelihood of balkanization.

While there may be proponents and critics of deliberative democracy who take refuge in the fact that political divorce (political exit) may, at least as a theoretical matter, be available to those who do not seek to live in a monolingual state,[84] this does not seem to be a reasonable or desirable alternative to me for several reasons. First, many linguistic minorities do not wish to leave the territorial unit (the state) but simply seek to take part in the affairs of the state through a process that values them, including that which is central to their culture, their

Wright, *Language and Power: Background to the Debate on Linguistic Rights*, 3 INT'L J. MULTICULTURAL SOC'YS, No. 1, 8 (2001), *available at* http://unesdoc.unesco.org/images/0013/001387/138775e.pdf (citing *La Grèce S'accroche au Statut de sa Langue au Sein de l'Union Europèenne*, LIBERATION, Jan. 4, 1995).

83.   *See* Peter A. Kraus, *Political Unity and Linguistic Diversity*, 41 EUR. J. SOC. 138, 152 (2000).

84.   After having drawn the map of the country into what are essentially linguistic (ethnic) administrative units, the new Ethiopian Constitution provides for the possibility of exit of any one of those units from the federation. ETHIOP. CONST. art. 39 (1) ("Every nation, nationality or people in Ethiopia shall have the unrestricted right to self determination up to secession.").

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language. But under the political divorce option, linguistic minorities are required "to make choices of penalties" between being denied their right to continue to be a part of the political union, on the one hand, and not to be full participants in that union, on the other hand.[85] Second, even if a linguistic group desired to separate and constitute a new political unit it would not be a very desirable path to follow. Given the fact that most states are constituted by more than one linguistic group and in some cases by hundreds of linguistic groups, the idea of political divorce as a solution to multilingualism is a recipe for chaos.[86] Third, given the trend in globalization where many states are coming together to form larger and larger political unions, such as the European Union, the issues that are raised within multilingual states are going to be raised more frequently in the context of emerging supra-states as well. There is no escaping the issues that are raised by multilingualism. Deliberative democrats (and their opponents) will have to give a more plausible account of how they would deal with multilingualism if they wish to remain relevant in the age of globalization.[87]

D. Deliberative Democracy in Multiple Public Spheres

This article offers an alternative to avoidance, unilingualism, and translation, by arguing that there are in fact ways deliberative democracy can be constitutionalized in a multilingual society. Using the notion of "multiple public spheres" developed by noted political theorist, Nancy Fraser,[88] I develop conceptual as well as institutional structures to argue that there is in fact a way in

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85. For a similar description of the consequences of theories that would subject women to oppressive cultural norms on the ground that exit is available see Ayelet Shachar, *On Citizenship and Multicultural Vulnerability*, 28 POL. THEORY 64, 86 n.48 (2000). *See also* Susan Moller Okin, '*Mistresses of Their Own Destiny': Group Rights, Gender, and Realistic Rights of Exit*, 112 ETHICS 205, 216-30 (2002).

86. According to one account there are 6,500 linguistic groups in the world. DANIEL NETTLE, LINGUISTIC DIVERSITY 1 (1999) ("Humankind today speaks about 6,500 different, mutually unintelligible languages.") Thinking about establishing a state to deal with the question of multilingualism would be chaotic in this context. The idea of establishing a state for every linguistic group will be to go down the road to chaos. There is something else that needs to be said here. Even if secession is the most desirable outcome from the point of view of the linguistic minority that seeks it, and even if the circumstances suggest that such separation will not trigger the dismemberment of the territorial state, often the decision will be resisted by the larger unit, for secession not only determines the fate of the separating group, but the future of the larger unit as well. An outlet to the seas may be lost with the loss of the self-determining group, or the region that is to constitute the new state may be rich in natural resources, and the like. For the proposition that encouraging "some groups to determine their own future may also mean allowing them to determine the future of others," *see* HOROWITZ, ETHNIC GROUPS IN CONFLICT, *supra* note 17, at 591.

87. To be sure, some opponents of regional integration efforts offer as one reason for skepticism what they perceive to be the difficulty of ensuring deliberative democracy in circumstances where populations are large and diverse. *See* Grimm, *supra* note 53. But it seems to me that the formation of larger units is an unavoidable process. In any case, many of the nation-states have the same two problems that are said to make regional integration unsuitable for deliberative democracy: size and multiple languages.

88. NANCY FRASEER, JUSTICE INTERRUPTUS: CRITICAL REFLECTIONS ON THE 'POSTSOCIALIST' CONDITION 80-85 (1997).

which deliberative democracy and multilingualism could be reconciled. The price of embracing deliberative democracy ought not be the denial of an important part of what or who one is. Indeed, a process that requires a cultural group to abandon one of the defining features of its identity is unlikely to get many adherents from members of that group. Nor will it ensure peace and stability, for it will not have been (or been viewed as) just. I discuss this alternative approach in some depth in Part VI of this paper. First, however, I will briefly set out the causes and nature of the language disputes which deliberative democracy must address if it is to be relevant to much of the world.

IV.
THE CAUSES AND NATURE OF LANGUAGE DISPUTES

Disputes over language are not new phenomena. The question as to which language will serve as the "official" language has probably been with us since the first encounter among people using different languages. For those inclined to adhere to the Biblical story, the fateful event that started it all was the Tower of Babel.[89] However, two major events of the last two centuries—colonialism and globalization—transformed the language issue, and raised the stakes as well as the frequency of disputes.

European colonialism raised the language question in three distinct ways: the way it organized the colonial state, the way it put together the settler state, and the way it treated indigenous languages in the settler states. While colonial expansion in the Americas and in Oceania set the stage for a siege of indigenous languages and cultures,[90] arbitrarily drawn boundaries in Africa and Asia, often put diverse linguistic groups in one territorial unit, and divided certain linguistic groups between two or more adjoining territorial units.[91] The consequence of

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89. *See* Genesis 11:1-9. The biblical story has it that people from all over the world came to the land of Shinar. There they started to build a city and a tower that "may reach unto heaven." When the Lord came down and saw what they were building and that "they have all one language" he thought "nothing will be restrained from them, which they have imagined to do," and he therefore "confounded their language, that they may not understand one another's speech." "[T]he Lord scattered them abroad from thence upon the face of all the earth. . . . Therefore is the name of it called Babel, because the Lord did there confound the language of all the earth: and from thence did the Lord scatter them abroad upon the face of all the earth." I must note here, however, that there is another face to the Old Testament story of the Tower of Babel where multilingualism is viewed as a curse (a punishment) from God on too ambitious a group of human beings. The New Testament presents linguistic multiplicity, gift of tongues as it is referred to, as a divine grace bestowed on those, such as the Apostles, that have earned divine favor. For a more scientific explanation of the emergence of linguistic multiplicity see DANIEL NETTLE & SUZANNE ROMAINE, VANISHING VOICES: THE EXTINCTION OF THE WORLD'S LANGUAGES 84-90 (2000).

90. For the struggle against extinction that indigenous languages have waged in the face of threats from settler societies see NETTLE & ROMAINE, *supra* note 89. In other circumstances, the language issue arose because the border between two countries was adjusted through conquest. The question of Spanish language use in California is partly a result of such adjustment. "[M]ost of [California] was once part of Mexico." Johnson & Martínez, *supra* note 19, at 316. (citation omitted).

91. *See* Case Concerning the Territorial Dispute (Libyan Arab Jamahiriya v. Chad), Feb. 3,

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this was the creation of ethnically and linguistically diverse nation-states in much of Africa and Asia whose constituent parts did not have much in common other than the brutal colonial experience. It is in states like those where conflicts over language are frequent and very intense.[92] Another aspect of the colonial project, and source of contemporary language conflicts, was the creation of settler states where people migrating from different colonial powers and speaking different languages were grouped into territorial units that eventually became independent nation states.[93]

Globalization's impact on the nation-state has led to two contradictory tendencies, both relevant to language-based disputes. On the one hand, globalization has led to the creation of larger and more diverse political unions like the European Union.[94] The creation of such larger political units, of course, raises the issue of which language will be the official (or working) language.[95] On the other hand, globalization has provided the condition for the cultivation of strong linguistic and ethnic identities that are increasingly challenging the nation-state's claim as the highest point of political obligation. The communication

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1994 I.C.J. 6, 52-53 (separate opinion of Judge Ajibola).

92. Indonesia and Nigeria are good examples of that phenomenon. It must be noted here, however, that some 'ethnic' groups were actually a creation of colonialism as well. They were "products of subgroups amalgamation in the colonial period of Asia and Africa." *See* CHANDRAN KUKATHAS, THE LIBERAL ARCHIPELAGO: A THEORY OF DIVERSITY AND FREEDOM 79 (2003). Kukathas reports that "[t]he Malays in Malaysia...emerged as a 'distinct' group only after colonizers created specific territories out of loose clusters of villages and regions; and much the same can be said for the Ibo in Nigeria, and the Moro in the Philippines." *Id.* at 79. However ethnic groups were created, it is an undeniable fact that colonialism also put many groups that perceived themselves as different ethnic groups together in a territorial unit calling itself the State.

93. The relationship between Anglophone and Francophone Canadians in Quebec, and Quebec's relationship with the rest of Canada might serve as an example of that phenomenon. *See* Jonathan Lemco, *Quebec's "Distinctive Character" and the Question of Minority Languages Rights, in* LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY 423 (James Crawford ed., 1992); Monica Heller, *Ethnic Relations and Language Use, in* LANGUAGE OF INEQUALITY 75, 76-8 (Nessa Wolfson & Joan Manes eds., 1985).

94. *See* Peter A. Kraus, *Political Unity and Linguistic Diversity*, 41 EUR. J. SOC. 138, 149-154 (2000).

95. The EU has, for the moment, managed to avoid serious conflict by making all languages of the member states official languages and by requiring that language matters in regard to the work of organs of the Community be resolved by unanimous vote. TREATY ESTABLISHING THE EUROPEAN COMMUNITY, art. 290, Dec. 24, 2002, O.J. (C 325) 12 (2002). However, it seems inevitable that the EU will have to reassess sooner or later, given the long term administrative costs and increasing union membership. *See* Kraus, *supra* note 94, at 152. For the huge cost that the official language arrangement puts on the Union *see id.* at 152. *See also One Tongue Wraps itself Around the Languages of Europe-France; Europe: A Worldwide Special Report*, THE AUSTRALIAN, Nov. 8, 2004, at 6 ("[O]fficial translations cost 2.55 euros ($4.40) for every European man, woman and child each year."). The Union has just expanded significantly. Ten nations have joined the Union increasing the membership of the Union from 15 to 25 and the number of languages from 11 to 20. *See id. See also* Claude Truchot, *Languages and Supranationality in Europe: The Linguistic Influence of the European Union, in* LANGUAGES IN A GLOBALISING WORLD 99, 109 (Jacques Maurias & Michael A. Morris eds. 2003) ("The cost [translation cost] it generates and the human and material means that are needed are often considered as obstacles to its extension and even to its very existence.").

revolution has played an especially effective role in this matter,[96] constituting what David Elkins calls "virtual ethnic communities."[97] Satellite and Internet communications have enabled ethnic and linguistic groups, divided by colonialism among several states, to link themselves as a unit whose political obligation is to the nations they dream of rather than to the territorial states to which they are currently attached. The Kurds are a good example of that. The Kurds have established many satellite channels, such as MED-TV, which have enabled them to broadcast (in Kurdish as well as other languages) to Kurds "living in Kurdish regions of Turkey, Iran, Iraq, Syria, and those of Kurdish diaspora in Europe."[98] The communication revolution is thus allowing groups such as the Kurds to continue to cultivate their linguistic and cultural identity and to shape parallel nations.[99] Furthermore, many minority languages within nation-states are seeing their revival thanks to the communication revolution. For example, the Welsh language in Britain and Gaelic in Ireland are seeing greater use today than fifty years ago.[100]

In some circumstances, the two processes of globalization that I described above seem to be causally linked to one another. Thus, for example, the intense interest in regional and minority languages in Europe seems to have been assisted by the emergence of inter-European institutions. As Dónall Ó Riagáin notes, "The first signs of interest in the future of the Communities' regional and minority languages appeared in the European Parliament in 1979."[101] The movement of power upwards was ironically the beginning of interest in the dispersal of power downwards. Whether it is the dispersion of power upwards or

96. For a detailed account of how the communication revolution is increasingly transforming the power of the territorial state by distributing power both upwards and downwards see Addis, *The Thin State, supra* note 3, at 13. ("The nation-state has come under pressure from two processes that seem to lead in two different directions. One challenge seems to lead to political fragmentation whereas the other seems to indicate in the direction of large economic, political and cultural unions.").

97. David Elkins, *Globalization, Telecommunication, and Virtual Ethnic Communities*, 18 INT'L POL. SCI. REV. 139 (1997).

98. DAYA KISHAN THUSSU, INTERNATIONAL COMMUNICATIONS: CONTINUITY AND CHANGE 201 (2000). *See also* MONROE E PRICE, MEDIA AND SOVEREIGNTY: THE GLOBAL INFORMATION REVOLUTION AND ITS CHALLENGE TO STATE POWER 80-82 (1st ed. 2002). I must note here that Kurdish language has three distinct dialect groups. *Kurmanji* is spoken by the Kurds of Turkey, Syria, the former Soviet Union, the Kurds in Lebanon, a third of the Kurds in Iraq and a substantial number of Kurds in Iran. *Sorani* is used in northeastern Iraq. And finally, many Kurds in the south of Iran speak a variety of dialects. *See* Joyce Blau, *Kurdish Written Literature, in* KURDISH CULTURE AND IDENTITY 20 (Philip G. Kreyenbroek & Christine Allison eds., 1996).

99. For the proposition that globalization is enabling the emergence of parallel nations *see* Adeno Addis, *The Kurdish Issue and Beyond: Territorial Communities Rivaling the State*, A.S.I.L. PROC. 108 (2004) (98 Am. Soc'y Int'l. L. Proc. 107 2004)

100. Dan Barry, *Gaelic Comes Back on Ireland's Byway ands Airwaves*, N.Y. TIMES, July 25, 2000, at A6.

101. Dónall Ó Riagáin, *Many Tongues but One Voice: A Personal Overview of the Role of the European Bureau for Lesser Used Languages in Promoting Europe's Regional and Minority Languages, in* 1 LANGUAGE, ETHNICITY AND THE STATE: MINORITY LANGUAGES IN THE EUROPEAN UNION 20, 22 (Camille C. O'Reilly ed., 2001).

downwards, globalization will intensify, rather than resolve, the language question, for in each new constellation there will be a minority (or minorities) that will want to push its language as a language of deliberation and exchange.

What of the argument that globalization is making English the lingua franca of the world?[102] Although it is true that U.S. dominance in the cultural, economic, political and technological domains is making English the preferred *second* language of many around the world, different linguistic groups have not been adopting English as the common language of political and social deliberation. Thus, the question of primary language used in the public realm in multilingual societies remains a contentious issue. While English may increasingly become the language of the cosmopolitan, the vernacular will continue to serve as the primary means of communication at the local level.[103] Moreover, there is no guarantee that English will remain the global language given the fact that other countries (China is a good example[104]), speaking other languages, are starting to emerge as political and economic competitors to the United States. Put simply, for some people, the local language or languages are likely to remain the only constant.

V.
TWO WAYS OF DEALING WITH LINGUISTIC MULTIPLICITY

What are the morally and practically acceptable language policies that a multilingual nation or a supra-nation may adopt? A multilingual nation-state could deal with multiplicity of languages within its borders in one of two ways. It could adopt unilingualism in all aspects of public life while allowing groups whose language has not been chosen for official status to use their languages in private (I refer to this as "coherent pluralism"). Here the multiplicity of the private is coordinated through the unilingualism of the public. Or, alternatively, the nation-state may practice official multilingualism ("multilingual pluralism") where some or all of the languages are designated as national or official languages in the territorial state.

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102.   *See, e.g.*, JENS DROLSHAMMER & NEDIM PETER VOGT, ENGLISH AS THE LANGUAGE OF LAW? AN ESSAY ON THE LINGUA FRANCA OF A SHRINKING WORLD 1 (2003) ("For the legal practitioners, the function of professional legal English has fundamentally changed in recent years: English has become their lingua franca."). *See also* Paul Bruthiaux, *Contexts and Trends for English as a Global Language*, in LANGUAGE IN THE 21ST CENTURY 9, 11 (Humphrey Tonkin & Timothy Reagan eds., 2003).

103.   *See* Will Kymlicka & Christine Straehle, *Cosmopolitanism, Nation-States, and Minority Nationalism: A Critical Review of Recent Literature*, 7 EUR. J. PHIL. 65, 70 (1999).

104.   "It is likely that the emergence this century of China as an economic and military superpower will lead to a greater role for Chinese as a language of wider communication." Bruthiaux, *supra* note 102. *See also id.* at 11 ("[C]urrent socioeconomic trends suggest that it is from China that any challenge to US geopolitical dominance is likely to emerge this century.").

A. Coherent Pluralism

Coherent Pluralism (CP) starts with the proposition that the state requires unilingualism for its coherence. This means that there is space for one, and only one, official language in a particular polity.[105] Official unlingualism may be either de jure, as in France,[106] and Germany,[107] where unilingualism is established by law,[108] or de facto, as in the United Kingdom and the United States, where it is simply an accepted practice.[109] Under CP, speakers of languages

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105. President Theodore Roosevelt made the point well: "We have room for but one language here, and that is the English language, for we intend to see that the crucible turns our people out as Americans, of American nationality, and not as dwellers in a polyglot boarding house." *Quoted in* I. Hayakawa, *The Case for Official English, in* LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY 94, 100 (James Crawford ed., 1992); *See also* Theodore Roosevelt, *One Flag, One Language, in* LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY 84, 85 (James Crawford ed., 1992).

106. Article 2 of the French Constitution provides: "The language of the Republic shall be French." 1948 CONST. art. 2. France's position in this regard is quite interesting. When it signed the European Charter for Regional or Minority Languages, France's response to the Charter's requirement that it report any regional or minority language in its instrument of ratification was to say that there were no regional or minority languages in France, even though there are regional languages. *See* European Charter for Regional or Minority Languages, Nov. 5, 1992, art. 3(1), Europ. T.S. No. 148. France's reluctance to accept linguistic diversity within its territory is also clear from its constitutionalizing unilingulaism. As a well-known study has shown, France's history since the second half of the 19th century has been one of adopting aggressive policies for purposes of language standardization. *See* EUGENE WEBER, PEASANTS INTO FRENCHMEN: THE MODERNIZATION OF RURAL FRANCE, 1870-1914 (1976). But compare this to France's well known diplomatic efforts to promote francophone in the world at large, even in countries where the French speakers are a minority within the particular country such as Quebec. *See* Cécile Laborde, *The Culture(s) of the Republic: Nationalism and Multiculturalism in French Republican Thought,* 29 POL. THEORY 716, 723-24 (2001). ("While claims for the recognition of regional languages are routinely confronted with (and often outweighed by) the overriding need for national unity, the promotion of the French language worldwide is invariably defended as a valuable contribution to cultural diversity (insofar as it provides an alternative to the hegemony of English.")). The provision of the Charter to which France gave the answer that there are no regional or minority languages is Article 3(1). It provides: "Each Contracting State shall specify in its instrument of ratification, acceptance or approval, each regional or minority language, or official language which is less widely used on the whole or part of its territory." European Charter for Regional or Minority Languages, Nov. 5, 1992, art. 3(1), Europ. T.S. No. 148.

107. Article 23(1) of the Verwaltungsverfahrensgestez (Law on Administrative Procedure) reads: The official language is German." § 23(1) VwVfG.

108. Law here refers to three means of regulation: constitutional law, statutory law, and administrative regulation.

109. In relation to the U.S., however, it is worth noting that many state constitutions have provisions that specifically declare English to be the official language of that state. Alabama (ALA. CONST. art. I, § 36.01); Arizona (ARIZ. CONST. art. XXVIII); Arkansas (ARK. CODE ANN. § 1-4-117 (2005)); California (CAL. CONST. art. III, § 6); Colorado (COLO. CONST. art. II, § 30); Florida (FLA. CONST. art. II, § 9); Georgia (GA. CODE ANN. § 50-3-100 (2005)); Hawaii (HAW. CONST. art. XV, § 4; Illinois (5 ILL. COMP. STAT. 460/20 (2005)); Indiana (IND. CODE ANN. § 1-2-10-1 (2005); Kentucky (KY. REV. STAT. ANN. § 2.013 (2004)); Mississippi (MISS. CODE ANN. § 3-3-31 (2004)); Nebraska (NEB. CONST. art. I, § 27); North Carolina (N.C. GEN. STAT. § 145-12 (2005)); North Dakota (N.D. CENT. CODE § 54-02-13 (2003)); and South Carolina (S.C. CODE ANN. § 1-1-696 (Law. Co-op. 2004)) have declared English as the official language of the state. Interestingly, except for Illinois and Nebraska all the declarations were made in the last 20 years. And in relation to the federal government, there have been numerous attempts in Congress over the years to amend the Constitution so as to make English the official language in the United States. *See, e.g.,* S.J. Res. 72, 97th Cong.

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other than the de facto or de jure national language will have the liberty to speak their language in private and to cultivate and transmit it in the same way that they cultivate and transmit other aspects of their culture. In this sense, CP is pluralist, but linguistic pluralism is to exist only in the private realm, in the same way that other aspects of the culture, such as religion, are to be practiced as private cultural rituals. The private is the realm of the individual and in that realm a person can cultivate, practice and transmit his or her culture and tradition individually or, more likely, in communion with others. Many national[110] and international documents and decisions seem to embody this view. The most well known international text that enshrines this view is Article 27 the International Covenant on Civil and Political Rights (ICCPR).[111] Article 27 of the ICCPR prohibits states from denying members of linguistic minorities within their territories the right "in community with the other members of the group . . . to use their language" in the same way that that they should not be prohibited from "profess[ing] and practic[ing] their own religion."[112] However, the public under CP is the domain of the citizen and in that domain the individual is to act as a member of a larger organ (body) in pursuit of the common enterprise. The plurality of the private is coordinated by the commonality of the public. Unitary language is to provide that commonality.[113]

There is a variation on unilingualism that bears mentioning here, although I shall not explore it in great detail because it is in my view utterly inconsistent with basic human rights and individual autonomy guaranteed by international human rights laws.[114] Some countries, such as Turkey, had until recently re-

(1981); H.R.J. Res. 81, 101st Cong. (1989). LANGUAGE LOYALTIES, *supra* note 18, at 112-113.

110.   An example of a decision that endorses such a right on the national level is a decision of the United States Supreme Court in the 1920s. *See* Meyer v. Nebraska 262 U.S. 390 (1923).

111.   G.A. Res. 2200, 21 U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966). *See also* Article 2(1) of the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguist Minorities. G.A. Res. 135, U.N. GAOR, 47th Sess., Supp. No. 49, at 210, U.N. Doc. A/47/49 (1992).

112.   G.A. Res. 2200, *supra* note 113. There are many regional human rights documents that affirm the notion of language right as a private human right. *See, e.g.*, Framework Convention for the Protection of National Minorities, Feb. 1, 1995, art. 4, Europ. T.S. No. 157.; European Charter for Regional and Minority Languages, *supra* note 106 ; The Oslo Recommendations Regarding the Linguistic Rights of National Minorities, O.S.C.E. Declar'n., High Commn'r on Nat'l Minorities, Feb. 1, 1998.

113.   In a well-known case that it decided in 1923, the Supreme Court of the United States, though ultimately deciding against the State of Nebraska, understood the "desire of the [Nebraska] Legislature to foster a homogeneous people with American ideals" when the Legislature adopted a law that prohibited "the teaching of any subject in any language other than the English Language or the teaching of languages other than the English Language to pupils who had not passed the eight grade." *Meyer*, 262 U.S. at 402, 397.

114.   *See, e.g.*, G.A. Res. 2200, *supra* note 113 , at art. 27; G.A. Res. 135, *supra* note 111, at art. 2(1) ("[L]inguistic minorities have the right...to use their own language, in private and in public."); European Charter for Regional and Minority Languages, *supra* note 106. In addition to the documents that I have cited that deal specifically with language, the non-discrimination provisions of almost all general human rights documents, universal as well as regional, make it impermissible to deny the rights listed in those documents on the basis of language-use; African Charter on Human

quired not only that linguistic minorities conduct public affairs in the national or official language, but also that they not use their languages in any public forum for any reason. The extreme measures espoused under this view stem from a theory that state coherence and integrity require that all citizens speak (and be seen speaking) the same language at all times when communicating in public fora.[115] Here, language is viewed both as a means of communication and a symbol of unity in the same way that a flag may be seen as a symbol of unity. This position appears to me to be of dubious utility for the purpose of forging unity. In fact, it may even have the opposite effect, as it may engender a great deal of resentment. In any case, government control and regulation of language uses that are not related to state or governmental activities or functions is inconsistent with two basic rights that should define a decent society: the rights of cultural groups to practice and manifest their culture in private and in association with others and generally the right of the individual to form and belong to an association. Both rights are recognized in, and guaranteed by, international human rights treaties or conventions as well as most nations' constitutions.

B. Multilingual Pluralism

There is a second approach to language policies, which might be referred to as "Multilingual Pluralism" (MP). MP rejects CP's assumption that state coherence requires unilingualism. On the contrary, MP claims that state coherence may in fact necessitate that the language of the various groups within the jurisdiction of the state be given some sort of official recognition. Supporters argue that such a policy advances state coherence and unity for two reasons. First, it ensures the full participation of various linguistic groups in the life of the nation. The deliberative process is more complete and more legitimate when it includes all linguistic segments of the polity.[116] Second, to the extent that the official recognition of a language is often viewed as a symbolic affirmation of the group that speaks the language, official multilingualism may in fact reduce, not intensify, conflicts among linguistic groups within a nation-state. Symbolic valuation will reduce the risk of alienation and resentment, feelings that are likely to in-

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and Peoples' Rights, June 27, 1981, art. 2, 1520 U.N.T.S. I-26363; American Convention on Human Rights, Nov. 22, 1969, art. 1(1), 1144 U.N.T.S. 17955.

115.   By "public fora" I simply mean any arena outside the confines of the home or other such private (out of public site) places. The Turkish Anti-Terrorist Act of 1991 prohibited Kurdish language use in public although private use in the home was no longer made illegal. Anti-Terrorist Act, No. 37113 (April, 1991). *See* Tove Skuntnabb-Kangas & Sertaç Bucak, *Killing a Mother Tongue-- How the Kurds are Deprived of Linguistic Human Rights, in* LINGUISTIC HUMAN RIGHTS: OVERCOMING LINGUISTIC DISCRIMINATION 347 (Tove Skutnabb-Kangas & Robert Phillipson eds., 1995). An Algerian law also makes it an offense to hold public meetings or conferences in any other language but Arabic, with the exception of international conferences using foreign languages. Law on Generalization of Arabic Language, No. 91-05 (1998) (amending No. 91-05 (1991)). As a result of this law, the Berber minority in Algeria cannot use its language to conduct public meetings.

116.   For an argument of the value of a deliberative approach to conflicts of culture see Monique Deveaux, *A Deliberative Approach to Conflicts of Culture,* 31 POL. THEORY 780 (2003).

crease the possibility of conflict and fragmentation. MP could also be defended on normative grounds. Official recognition[117] of the various languages spoken in a polity "embodies an attractive idea of equality that is central to much contemporary liberal thought."[118] Three dimensions of equality are implicated here: equality in democratic participation (instrumental), equality in status (symbolic), and equality in cultural integrity (social).

But how does a state realize MP given the myriad of practical impediments discussed in section I through IV of this paper? A deliberative democrat, committed to multilingualism could take a different approach from the ones explored thus far. The approach would invoke the idea of multiple publics and multiple public spheres developed and elaborated by Nancy Fraser[119] insist that the coexistence of multilingualism and deliberative democracy will not necessarily lead to legitimacy problems or trust deficits. I devote the remainder of this paper to exploring this alternative approach.

VI.
COMMUNITIES OF COMMUNICATION: FROM THE COMPREHENSIVE PUBLIC
SPHERE TO MULTIPLE PUBLIC SPHERES

A. Deliberation in Multiple Public Spheres

The idea of deliberative democracy is tied to the notion of a "public sphere" that Jürgen Habermas originally developed in his 1962 book, *The Structural Transformation of the Public Sphere*[120] and defended in his subsequent work.[121] The public sphere is "a theatre . . . in which political participation is

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117.   By official recognition, I mean to refer to the process where a particular language is adopted to be the medium of communication in some or all areas of the territorial state and in some or all areas of public life, such as schooling, the judicial process, and the legislative process. The status is fairly stable and the use of the language is not limited to the achievement of a specific purpose of a limited duration. Patten defines public recognition in the following way: "a language enjoys public recognition when it is possible to access public service and/or conduct public business in that language." Patten, *Political Theory and Language Policy, supra* note 8, at 692. A public prohibition of theft by an Italian municipality in Albanian, Arabic, Rumanian and Serbo-Croatian will not thus be considered official recognition of those languages. H. Patrick Glenn, *Language Lange et Droit*, 49 AM. J. COMP. L. 541, 543 (2001) (book review). The use of the various languages in this instance is limited for the specific and narrow purpose of warning immigrants that may not speak Italian of the consequences of theft.

118.   Patten, *Political Theory and Language Policy, supra* note 8, at 698. *See also* Truchot, *supra* note 95, at 101 (Referring to the recognition of all the national languages of a member state as official languages of the Union, Truchot observes that "[t]he choice of languages stems from [the unanimity] rule as well as from the principle of equality between member states.").

119.   *See* FRASER, *supra* note 88, at 69-98.

120.   JÜRGEN HABERMAS, THE STRUCTURAL TRANSFORMATION OF THE PUBLIC SPHERE: AN INQUIRY INTO A CATEGORY OF BOURGEOIS SOCIETY (Thomas Burger & Frederick Lawrence trans., 1989).

121.   *See* 2 JÜRGEN HABERMAS, THE THEORY OF COMMUNICATIVE ACTION: LIFEWORLD AND SYSTEM: A CRITIQUE OF FUNCTIONALIST REASON (Thomas McCarthy trans., 1987).

enacted through the medium of talk. It is the space in which citizens deliberate about their common affairs . . . an institutionalized arena of discursive interaction."[122] The public sphere is indispensable to deliberative democracy. But for Habermas and many other defenders of the public sphere as an arena of deliberative democracy, there is only a unitary public sphere.[123] However, the notion of a unitary public and a unitary public sphere is becoming indefensible in the era of globalization and the communication revolution. Thus, if deliberative democracy is to work, it has to do so in the context of multiple publics and multiple public spheres. The idea of multiple public spheres is descriptively consistent with what we see going on around us, will reduce chances of conflict and destruction, and is normatively more desirable. If "the idea of the public sphere is indispensable to critical theory,"[124] then the notion of multiple public spheres is crucial to what I call "critical theory plus," critical theory that takes diversity of publics and cultures seriously.

B. Linguistic Federalism and Deliberative Democracy

How do we institutionalize the notion of deliberation in multiple public spheres in relation to the language question in fractured societies? Perhaps the most obvious and realistic way is to adopt a version of linguistic federalism. By linguistic federalism I mean to suggest an arrangement that would divide the polity into linguistically distinct areas where the language of the group would be the official language of the linguistic federal unit. Just like any other territorial division, linguistic federalism will provide substantive autonomy (including linguistic autonomy) for the federal unit to shape and formulate issues of importance to the unit. Deliberation on local matters would then be conducted in the language of the federal unit. To the extent that most substantive deliberative activities are going to be conducted at the unit level, linguistic federalism will ensure deliberative democracy.

Many international documents dealing with minorities emphasize the importance of "appropriate local or autonomous administrations corresponding to

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122. FRASER, *supra* note 88, at 70.

123. Another prominent political philosopher explicitly links the success of democracy and by implication that of deliberative democracy to the existence of a unitary public sphere. Brian Barry observes: "The charge [that there is democratic deficit in relation to multilingual states] is certainly sustainable if the model of a democratic polity is taken to be one in which there is a single comprehensive realm of discourse giving rise to a unified 'public opinion. . . .'" BARRY, CULTURE & EQUALITY, *supra* note 61, at 227. Interestingly, even Habermas, who provided the target against whom Fraser developed her notion of multiple publics, has, in his recent work, seemed to follow her lead embracing some aspects of her idea of multiple public spheres. *See* HABERMAS, *supra* note 4. For a fuller discussion of Habermas's use of Fraser's idea of multiple public spheres as a solution to the problem of the unitary public sphere see William E. Scheuerman, *Between Radicalism and Resignation: Democratic Theory in Habermas's Between Facts and Norms, in* HABERMAS: A CRITICAL READER 153 (Peter Dews ed., 1999), *cited in* Jodi Dean, *Publicity's Secret*, 29 POL. THEORY 624, 650 n.37 (2001).

124. FRASER, *supra* note 88, at 71.

the specific historical and territorial circumstances of minorities"[125] and the use of minority languages in those units for the effective participation of minorities in public affairs and the deliberative process.

The question arises, however, wouldn't linguistic pluralism preclude national deliberation? Not necessarily. I have argued in an earlier work that linguistic pluralism and national solidarity could be reconciled with a linguistic federalism that enables language units to cultivate and develop their language and to conduct local affairs in that language while at the same time requiring members of that linguistic group to be competent in a national language(s). The national language could be taught as a subject in elementary and secondary schools and as the medium of instruction in post-secondary education.[126] National deliberation would then be possible. What we will then have is deliberation in "multiple public spheres."[127] Now, if the number of languages within the territorial unit is small enough, say two or three, then perhaps it may be possible to make all of them national languages and to require that linguistic regions teach them all as a subject in school so that at the national level there could be institutional bilingualism or trilingualism.[128] The idea of ensuring that local deliberation does not make national deliberation and national solidarity impossible was duly noted in many international legal documents. For example, Article 4(4) of the 1992 UN Declaration on the Rights of Persons Belonging to National or

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125.   *See* The Copenhagen Document, O.S.C.E. declar'n, at para. 35, Conference on the Human Dimension of the O.S.C.E., June, 1990. Although not a treaty, the Copenhagen Document has both political and legal significance due to the fact that it was adopted by consensus by O.S.C.E. member (participant) states. *See also* Framework Convention for the Protection of National Minorities, *supra* note 114, at art. 10(2) (requiring States to "make it possible to use the minority languages in communications relations [with] administrative authorities."); *id.* at art. 15 (asking States to "create the conditions necessary for the effective participation of [minorities]"). This means creating the condition, among other things, where the minority languages are full-fledged vehicles for communication in local political life.

126.   Addis, *supra* note 10, at 780-84. It is important to note here that the notion of linguistic autonomy implies that the federal unit could decide not to use a local language and instead utilize the national language as its language of deliberation. A federal unit may, for various reasons, such as the advantage of social mobility that is thought to come with the use of the national language, may wish to adopt the national language as its official language in all areas of government. Under those circumstances the federal unit may elect to sustain the local language by simply teaching it as a subject in school. It is important that choices should not be dictated from the federal government as to what language arrangement is to be made by the federal unit. One problem in the case of Ethiopia, which claims to have some form of linguistic federalism, appears to be that choices are simply dictated by the central government. The federal government of Ethiopia decides not only the language of deliberation the unit shall use, but also the scope of the substantive domain of deliberation. It is not only in relation to what language the unit shall choose as its language of deliberation that the federal government decides, but how small or large the substantive domains of deliberation shall be too.

127.   *See* FRASER, *supra* note 88, at 69-98; *See also* Nancy Fraser, *Rethinking the Pubic Sphere: A Contribution to the Critique of Actually Existing Democracy, in* HABERMAS AND THE PUBLIC SPHERE 109 (Craig Calhoun ed., 1993).

128.   In some circumstances, institutions have attempted to make a distinction between official and working languages, a distinction that I shall not make or pursue here. At the United Nations, for example, six languages—Arabic, Chinese, English, French, Russian and Spanish—have the status of official languages while English and French are essentially the working languages for the organization. *See* Addis, Cultural Integrity, *supra* note, 10, at 786-87.

Ethnic, Religious and Linguistic Minorities, after affirming the importance of providing the condition for minorities to cultivate their language and to have access to their history and tradition through the use of that language, mandates States to ensure that minorities have "adequate opportunities to gain knowledge of the society as a whole."[129] The best way to do that is, of course, to ensure that linguistic groups have a command of the national language(s).

There are three distinct advantages to thinking in terms of deliberation in multiple public spheres. First, such an approach reduces the risks associated with a single comprehensive public where it is difficult for minorities or marginalized groups to "expose modes of deliberation that mask domination by. . . absorbing the less powerful into a false 'we' that reflects the more powerful."[130] By providing parallel discursive arenas, some version of linguistic federalism will enable linguistic groups to cultivate and develop their language as well as to formulate issues of concern to them before those issues can be pressed as concerns to the comprehensive or national public, that "structured setting where cultural and ideological contests or negotiations among a variety of publics takes place."[131] The claim here is that in the same way that subaltern groups such as women have benefited from the formation of parallel discursive arenas where they have been able to "invent and circulate counterdiscourses, which in turn permit them to formulate oppositional interpretations of their identities, interests and needs,"[132] so could linguistic minorities. Put simply, linguistic federalism will be more conducive both to "participatory parity"[133] and to the possibility that issues of common concern will be developed discursively rather than taken as a given.

Second, linguistic federalism will provide linguistic groups with the public space, including the institutions of modern life, to maintain and cultivate their language, a cultural resource that is often viewed as central to their identity. To the extent that full and effective deliberation requires that participants are able to bring to the discursive arena all aspects of themselves,[134] linguistic federalism

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129.   G.A. Res. 135, *supra* note 113, at art. 4(4).

130.   FRASER, *supra* note 88, at 81 (citation omitted). *See also* Fraser, *supra* note 130, at 123 (citation omitted); Sanders, *supra* note 33, at 349 ("In our political culture," the citizens that "are less likely to present their argument in ways that we recognize as characteristically deliberative . . . are likely to be those who are already underrepresented in formal political institutions and who are materially disadvantaged, namely women; racial minorities; especially Blacks; and poorer people."); Jane Mansbridge, *Feminism and Democracy*, AMERICAN PROSPECT, Spring 1990 (No. 1), at 127.

131.   FRASER, *supra* note 88, at 82; *See also* Fraser, *supra* note 130, at 125.

132.   FRASER, *supra* note 88, at 81; *See also* Fraser, *supra* note 130, at 123.

133.   "Participatory parity" is Fraser's phrase. *See* FRASER, *supra* note 88, at 80, 82. Linguistic federalism will be more conducive to participatory parity by dispensing with a unitary public that "bracket[s] rather than eliminate[s], structural social inequalities." *Id.* at 79.

134.   *See, e.g.*, HABERMAS, THE INCLUSION OF THE OTHER, *supra* note 35, at 40. (Habermas advocates a "moral universalism [that is] sensitive to difference" and "takes the form of a *nonlevelling* and *nonappropriating* inclusion of the other *in his otherness*."). And clearly language is the paradigmatic example of otherness. At another point Habermas exhorts majority citizens of states to "sharpen [their] sensitivity to the diversity and integrity of the different forms of life co-existing

gives those groups the condition that would allow them to maintain and cultivate important aspects of their identities prior to, and in preparation for, the national or general deliberative process.

Third, linguistic federalism will provide better chances for genuine deliberative and participatory democracy than national deliberative forums that are, as Will Kymlicka notes, "almost invariably elite-dominated."[135] This argument is very similar to the arguments that are advanced in support of federalism generally. The range and quality of deliberation is likely to be higher within smaller units and in our case here, when conducted in the vernacular.

To those who might view linguistic federalism as anachronistic in the age of cosmopolitanism and globalism, I have two responses. First, federalism is, in fact, the wave of the future, as the European Union seems to suggest; the idea of multiple public spheres is the only way to make deliberation work if it is to work at all. The only way globalization is going to work is if it is accompanied by some version of federalism which minimizes resistance from those who feel power is migrating to people over whom they have very little control, living in far away places. If federalism is thought to be good, or necessary, enough in the context of supranational entities there is no reason why it should not be regarded as such in the national context. The concerns and interests (e.g. cultural integrity, identity and participatory parity) that animate both are similar.

Second, to the extent that the concern is that linguistic federalism may cause division within nation-states—perhaps more so than other forms of organizing the state—my response is to point out how often the demand on linguistic minorities to come to the deliberative forum stripped of such a meaningful part of their identity has led to destructive conflicts.[136] A linguistic minority which views the union as one into which it is admitted as a full participant is less likely to resist being part of the union and less likely to seek political divorce.

Moreover, linguistic federalism is currently the defining feature of many democratic states.[137] Spain is perhaps the best example. Spain has some of the

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within a multicultural society." *Id.* at 225. But astonishingly, he does not deal with the issue of how sensitivity is to be sharpened towards a cultural form that is regarded by many, at least many minorities, as a major definer of their cultural integrity, language; *See also* James Bohman, *Deliberative Toleration* 31 POL. THEORY 757, 757 (2003) ("[D]eliberative democracy requires that citizens have equal standing and influence in the process that shapes" the resolution of "deep and potentially irresolvable conflicts.").

135. KYMLICKA, Territorial Boundaries, *supra* note 75, at 269.

136. The notion that linguistic federalism is a special case resembles the argument that opponents of racial classification in the United States make even when the classifications are for the purpose of remedying racial inequities. Although they may be comfortable with other forms of classification that would advantage one group over another, they resist race-based classification that advantages racial minorities on the theory that racial classification is especially corrosive to the polity. I have argued elsewhere why I think that such argument is rather unconvincing. *See* Adeno Addis, *Role Models and the Politics of Recognition,* 144 U. PA. L. REV. 1377 (1996).

137. Canada, Belgium, Switzerland, South Africa and Spain are examples. The South African case is a lot more ambiguous. Although eleven languages are proclaimed as official languages (*see* S. AFR. CONST. art. 6(10)), the actual practice seems to indicate that African languages are rarely

greatest internal linguistic diversity in the West and it is a country that has explicitly adopted linguistic federalism as a way of providing multiple public spheres for linguistic maintenance and deliberative process. Article 3 of the Spanish Constitution of 1978 recognizes linguistic pluralism by making Castilian (Spanish) "the official language of the State," one all Spanish citizens are obligated to know and have the right to use, while recognizing that other Spanish languages (such as Catalan, Mallorquín, Galician, Valenciano, and Basque) "will be official [languages] in their respective Autonomous Communities according to their Statutes."[138] Although there are linguistic-based disputes that make their way now and then to the Spanish Constitutional Court, multilingualism has on the whole served Spain well in relation to the two objectives that we want multilingualism to attend to: multiple public space for the deliberative process and the maintenance of minority languages. In relation to the latter, a commentator familiar with Spanish language issues observes that the result has been "an important recovery of the Catalan, Galician, and Basque languages in teaching, legislation and public administration."[139]

The Kingdom of Belgium provides another example of linguistic federalism. Initially conceived as a unitary State, Belgium has now gradually moved towards a linguistic-based federal arrangement. This federal arrangement is a result of constitutional reforms in the 1970s and 1980s. "By Article 3 bis of the Constitution, added on 24 December 1970, Belgium is divided into 'four language regions: the French-language region, the Dutch-language region, the bilingual region of Brussels-Capital and the German-language region.'"[140] Although there are occasional tensions arising from the linguistic federal arrangement, as is clear from a case that came before the European Court of Human Rights in the 1980s,[141] the arrangement has enabled the Kingdom to maintain political peace and stability by ensuring that linguistic groups have the cultural space to maintain and cultivate their linguistic heritage while simultaneously providing for institutions for interlingual communication. To be sure, I believe that the Spanish example is more useful than the Belgian example for the purposes of this paper, since many countries around the world embroiled in in-

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used in public administration. English has become, and some say has been encouraged to be, the lingua franca. "A choice for English as medium of instruction is greatly influenced by the legacy of Apartheid's indoctrination about the lack of value of indigenous languages and the perception of the absolute power of English." Kristin Henrard, *Language Rights and Minorities in South Africa*, 3 INT'L J. MULTICULTURAL SOC'YS, No. 2, 78, 91 (2001), *available at* http://www.unesco.org/shs/ijms/vol3/issue2/art3.

138.   *Cited in* Jesús Prieto de Pedro, *Democracy and Cultural Difference in the Spanish Constitution of 1978*, *in* DEMOCRACY AND ETHNOGRAPHY: CONSTRUCTING IDENTITIES IN MULTICULTURAL LIBERAL STATES 61, 76 (Carol J. Greenhouse & Roshanak Kheshti eds., 1998). "The Autonomous Communities are decentralized territorial political entities (in a way similar to each of the fifty American states) that act out the self-government of the different 'nationalities' and 'regions' of Spain." *Id.* at 69.

139.   *Id.* at 77.

140.   Mathieu-Mohin and Clefrayt v. Belgium, 113 Eur. Ct. H.R. (ser. A) at para. 19 (1987).

141.   *Id.*

tense linguistic disputes are home to more than just three of four languages (as is the case in Belgium and Switzerland). Nevertheless, the Belgian example shows that linguistic federalism can manifest itself in various ways and that, in certain circumstances, a national language may not be needed to ensure interlingual solidarity and a proper national deliberative process.[142]

Let me not be seen as minimizing the force of the argument that linguistic (ethnic) federalism will tend to foster and harden division among the various groups. As I noted in the last paragraph, such danger cannot be dismissed as fanciful. We see signs of it around us.[143] But I believe the danger can be avoided with appropriate institutional setups. Linguistic federalism in the way I have described it above minimizes the danger of fragmentation by ensuring that ethnic groups have the public space both for the sustenance of their culture, including their language, and for an initial deliberative process that is not dominated by elite members of the federation. While the notion of "enclave deliberation" (to borrow a term from Cass Sunstein)[144] will be "crucial to the development of ideas and approaches that would not otherwise emerge and that deserve a social hearing,"[145] a national deliberative system through a common national language will ensure that the component parts of the linguistic federation will be linked to one another. They will not be insulated from one another. A national deliberative system that is conducted through a common language will guard "against a situation in which like-minded people will wall themselves off from alternative perspectives."[146] Linguistic federalism reduces resentment[147] among linguistic groups by virtue of the fact that no group is required to

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142. It could be argued, however, that even in the case of only two or three languages, in the absence of a common national language, the deliberative process may be either inefficient and/or may lack depth.

143. Ethiopia is a good example. The threats of fragmentation and hostilities among ethnic (and linguistic) groups that currently exist in Ethiopia are not the result of the mere fact that there is an ethnic (linguistic) federalist structure. Rather, it is how that structure was shaped and how the national governing party that established it has used it. The federalist structure was simply imposed on the country without an attempt to persuade the public about its merits. Like everything else that happens in the country, this important restructuring was done without any attempt to get the consent of the governed. Even more distressing is that there is a widely held (and not an unreasonable) view in the country that the governing group set up the structure initially not so much to deal with the just aspiration of the various ethnic and linguistic groups, but as an attempt at a dispersed form of control. Indeed, there are many indications that the ruling group has instigated hostilities and skirmishes among ethnic groups.

144. Sunstein, *Deliberative Trouble?, supra* note 11, at 105.

145. *Id.* at 105.

146. *Id.* at 105.

147. The Explanatory Report of the Charter for Regional or Minority Languages, adopted under the auspices of the Council of Europe, notes that "[f]ar from reinforcing disintegrating tendencies, the enhancement of the possibility to use regional or minority languages in the various spheres of life can only encourage the groups who speak them to put behind them resentments of the past which prevented them from accepting their place in the country in which they live and in Europe as a whole." Eur. Consult. Ass. *Explanatory Report to the European Charter for Regional or Minority Languages*, ETS No. 148, *supra* note 106, at para. 13 (1998), *available at* http://conventions.coe.int/treaty/en/Reports/Html/148.htm.

give up part of its identity. It also enriches the national deliberative process by increasing the diversity of the society's "aggregate 'argument pool,'"[148] and it guards against the danger of insulation that has the potential to breed strident parochialism. Of course, linguistic federalism may not work in every society that is severely divided along language lines, but in some circumstances the union may be unsustainable anyway, for reasons unrelated to the language issue.

C. Limitations to the Application of Linguistic Federalism

The notion of linguistic federalism here is limited to national and indigenous linguistic groups—linguistic groups that have existed in the particular polity as more or less stable and distinct groups for an extended period of time.[149] I do not mean to include here immigrants who may have difficulty with the language of their adopted country.[150] The response to the linguistic difficulties of recent immigrants will have to take forms other than linguistic federalism or the according of official status to the languages of those immigrant groups, because the issues that are raised by the difficulties of these groups are different from those faced by indigenous and national groups. Although I have indicated in earlier writings that it may be a mistake to make a distinction between national and immigrant groups for purposes of language rights,[151] I am now persuaded by Kymlicka's argument and believe it to be correct, both morally and prudentially,

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148. Sunstein, *Deliberative Trouble?*, *supra* note 11, at 105; *See also* CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 83-105 (1989).

149. The idea as to what time frame may be taken as a sufficiently "extended period of time" is of course not an easy one and a decision will have to made in the context of the particular environment. What this requirement does, however, is exclude claims from relatively recent immigrants.

150. This position is consistent with the view embodied in the European Charter for Regional or Minority Languages which excludes immigrant languages from the ambit of the Charter. *See* European Charter for Regional or Minority Languages, *supra* note 106, at art. 1(a) (expressly excluding "languages of migrants."). *See also* The Universal Declaration of Linguistic Rights, which has a similar definition of a language group for the purpose of enumerating what it says are the rights that are owed to minority language groups. Universal Declaration of Linguistic Rights, June 9, 1996, art. 1(5), *at* http://www.unesco.org/cpp/uk/declarations/linguistic.pdf ("This Declaration considers as a language group any group of persons sharing the same language which is established in the territorial space of another language community but which does not possess historical antecedents equivalent to those of that community. Examples of such groups are immigrants, refugees, deported persons and members of diasporas."). *See also id.* at art. 4(1) ("[P]ersons who move to and settle in the territory of another language community have the right and duty to maintain an attitude of integration towards this community."). *But cf.* U.N. ESCOR, Comm'n on Human Rights, 50th sess., general comment 23 to ICCPR, at para. 5.2, U.N. Doc. CCPR/C/21/Rev.1/Add. 5, where the Human Rights Committee interprets the language right in Article 27 of the ICCPR (G.A. Res 2200, *supra* note 113) as including all linguistic minorities rather than just national or indigenous minorities. ("[I]ndividuals belonging to [linguistic] minorities should not be denied the right, in community with members of their group, to...speak their language. Just as they [linguistic minorities] need not be nationals or citizens, they need not be permanent residents. Thus, migrant workers or even visitors in a State party constituting such minorities are entitled not to be denied the exercise of those rights."). But of course neither Article 27 of the ICCPR nor any of the international documents dealing with linguistic rights contemplate a positive duty on the state. They merely require that the state allow linguistic minorities to cultivate and pass their culture in private.

151. Addis, *supra* note 10.

to make such distinctions.[152]

First, immigrant groups do not have a reasonable expectation that their languages and cultures will be accorded some sort of official recognition in their adopted country. And it is not unreasonable for the immigrant country to expect members of these groups to learn the language or languages of the country if they are to be full participants in the life of the country.[153] Indeed, the immigrant country will be justified to require competence in the language or languages of the country as a condition of admission to the political community. I am prepared to agree with Michael Walzer[154] and the United States Supreme Court[155] that the power to condition admission to the community on the possession of certain attributes, such as the requirement that one be competent in the national language, is an important attribute of what it means to be a community. In this regard political communities are no different from other communities.

Second, the symbolic dimension of language that has made the language issue so divisive in many countries is not as salient here as it is in relation to national and indigenous groups where the choice of a language of another group as the official language is often viewed as the choosing or valuing of one culture over others. Often, though not always, immigrants move to their adopted countries because they are attracted by the culture and institutions of their adopted country. Hence, the feeling of symbolic injury does not exist to the same extent, if at all, when their languages are not designated as official languages or when the state does not assist in the maintenance of those languages.

Third, to the extent that part of the reason we want to provide public space for indigenous and national languages is because we worry about their decline and ultimate extinction, then languages of immigrant groups do not generally face a similar threat. Often, the languages of immigrants are official or national

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152. Perhaps I would modify Kymlicka's definition of national linguistic minorities in this manner: "for purposes of linguistic federalism, a national linguistic minority is one that has existed in the particular territorial state as a more or less stable and distinct linguistic group for an extended period of time. If the linguistic group was incorporated into the nation-state involuntarily, then that historical fact and the group's current distinct status will make it a national group." However, even if the group had "voluntarily" immigrated into the territorial state sometime in the distant past, there may be circumstances (rare perhaps) when the current distinct status which has existed as more or less stable for an extended period of time should lead to the conferral of national status on a group. This is when the situation seems to indicate that the circumstances under which the particular group came into the territorial state are less than voluntary, although at some formal level it could be said to have been voluntary. For a critique of the concept of a national minority on the account that it is not always easy to distinguish between national and immigrant groups, *see* KUKATHAS, *supra* note 93, at 80-85.

153. WILL KYMLICKA, MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS 95-96 (1995).

154. MICHAEL WALZER, SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY 39 (1983).

155. Chae Chan Ping v. United States, 130 U.S. 581 (1889) (Chinese exclusion cases). My agreement with the Supreme Court here is not to the specific result it reached, but to the general proposition it expounded that setting of the rules of admission to the community is part of what it means to be a political community.

languages in other states.[156]

Fourth, the best remedy for immigrants that have not yet become proficient in the language of their adopted country, is to provide essential services (both in terms of social welfare and the deliberative process) in their language while simultaneously making resources available to assist them to be proficient in the national or official language.[157] I believe that given the nature and size of immigrant communities this would not be, nor should it be seen as, inefficient. It should simply be regarded as part of the assimilative process which most immigrant groups desire. In any case, in many instances immigrant communities will not be territorially concentrated, thus making the notion of linguistic federalism inapplicable. It is worth noting, of course, that not all indigenous or national minority groups are territorially concentrated either. Even if they were, they may have become a minority within the administrative unit, its traditional area of settlement, and the size of the minority community may not justify the creation of an administrative unit. So how would multilingualism work under such circumstances?

A linguistic group may, if it wishes, establish a private school and make its language the medium of instruction at the elementary level while offering the national as well as the regional languages as subjects, so that members of the linguistic minority will simultaneously cultivate their language while also acquiring proficiency in the national and regional languages. Under this plan, post-elementary education will be conducted in the national language though the minority language may remain a subject of instruction throughout.[158] This is different in two ways from the unilingualism that I described earlier, where linguistic multiplicity is permitted in private but banned from public discourse. First, in the educational system I describe here, the minority language becomes part of

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156. Of course, there may be exceptions at both ends of the spectrum. On one end of the spectrum, there may be immigrant languages that are neither powerful nor have a sufficient number of speakers in the home country to be designated as official languages. On the other end of the spectrum, we may have national groups which are fighting for the official recognition of their language, a language which may in fact have powerful speakers in another country. An example here is French in Quebec and perhaps Tamil in Sri Lanka. In relation to the latter, people have noted the fact that a substantially larger number of people in Southern India speak Tamil than the Tamil minority in Sri Lanka. *See* De Votta, *supra* note 1, at 124. ("[Tamil is] a living and virile language spoken by over 40 million people in Sri Lanka and Southern India." (quoting Parliamentary Debate, col. 214, (May 3, 1956))). Only a fraction of the Tamil speakers are from Sri Lanka. Most Tamil speakers live in South India. Of course, it could be argued that the Tamil language in India is not that secure. At least not as much as French is in France!

157. *See* Patten, *Political Theory and Language Policy*, *supra* note 8, at 697-99 (suggesting how the state could accommodate the linguistic need of individuals without official multilingualism.). *See also* Lau v. Nichols, 414 U.S. 563 (1974), where the Supreme Court of the United States was faced with the issue of what linguistic accommodation a school system should make for children of Chinese immigrants who were not proficient in English. The Court decided that non-accommodation of the linguistic needs of these children was violative of the Civil Rights Act of 1964 which prohibited discrimination on the basis of, among other things, national origin. As the Court saw it, non-accommodation in this case was a deprivation of "any meaningful schooling because the children cannot understand the language of the classroom." *Id.* at 572 (Blackmun, J., concurring).

158. For a more detailed account of such a policy see Addis, *supra* note 10, at 780-84.

the public realm in that it is used in an important area of public life (education), either as a medium of instruction or as a subject of interest. Second, the use of one's language as a means of instruction or as a subject of interest in education enhances the language's chances of survival.[159] This assumes, of course, that members of these linguistic groups would have the right to opt out of such arrangements.[160] It may even be reasonable to require a government to assist in the financing of minority schools if numbers warrant,[161] and if the minority cannot otherwise afford to establish a school that would use the minority language as a medium of instruction. In light of limited resources and the possibility of innumerable minority enclaves, however, it seems reasonable to require that there be a critical mass of minority students before a government would be required to establish (or subsidize) a school for linguistic minorities.

D. Trust and Multiple Public Spheres

If linguistic federalism can be said to dispose of the issue of legitimacy by avoiding costly and inefficient systems of translation, what of the issue of trust? Is it possible that linguistic federalism might lead to suspicion, and a lack of trust, among the various linguistic groups such that deliberations among them will become like the worst form of pluralist politics?

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159. *See* JEFF SPINNER, THE BOUNDARIES OF CITIZENSHIP: RACE, ETHNICITY, AND NATIONALITY IN THE LIBERAL STATE 147 (1994) ("[L]anguages that are not supported by public institutions or in civil society will have a hard time surviving.").

160. *See* Addis, *supra* note 10, at 783.

161. Article 23 of the Constitution Act, 1982 of Canada provides that Canadian citizens have the right to "have their children receive primary and secondary school instruction in [French or English]...whenever in the province *the number of children of citizens who have such a right is sufficient* to warrant the provision to them out of public funds of minority language instruction." CAN. CONST. (Constitution Act, 1982) art. 23(3) (emphasis added). *See also* European Charter for Regional or Minority Languages, *supra* note 106, at art. 8 § 2 ("With regard to education and in respect of territories other than those in which the regional or minority language are traditionally used, the Parties undertake, *if the number of users of a regional or minority language justifies it*, to allow, encourage or provide teaching in or of the regional or minority language at all the appropriate stages of education.") (emphasis added)). *See also* UN Declaration on the Rights of Persons Belonging to National, or Ethnic, Religious and Linguistic Minorities, *supra* note 41, at art. 4 § 3 ("States should take appropriate measures so that, *wherever possible*, persons belonging to minorities may have *adequate opportunities* to learn their mother tongue or to have instruction in their mother tongue.") (emphasis added). The issue of numbers was also raised in a decision by the Supreme Court of the United States in *Lau v. Nichols supra* note 160. The issue was whether non-English speaking Chinese students in the then recently integrated San Francisco school district were entitled to some sort of relief either through the teaching of English to those who do not speak the language or in any other way. The majority of the Court concluded that the non-English speaking students are entitled to some sort of relief and remanded the case to the lower courts "for the fashioning of appropriate relief." *Lau*, 414 U.S. at 569. (Douglas, J., for the majority). The school system had 2,856 students of Chinese ancestry and of those about 1,800 did not receive supplemental instruction in English. Justice Blackmun wrote a separate concurrence to emphasize the fact that if the number of students of Chinese origin were not as high as they were, he might have not gone along with the idea of relief that included a requirement that the school district provide special instruction. Here is how Justice Blackmun closed his concurrence: "For me, numbers are at the heart of this case and my concurrence is to be understood accordingly." *Id.* at 572 (Blackmun, J., concurring).

The trust argument is certainly powerful. As Brian Barry has persuasively argued, if there aren't institutional structures that allow the cultivation of trust, or at least the minimization of suspicion and strangeness among the various groups within the political community, it will be difficult to develop and conduct policies in a democratic society, let alone to have an effective form of deliberative democracy. There is no doubt that there would need to be a sense of shared identity and commonality for there to be meaningful and sustained deliberative and participatory democracy. Language is clearly one of the institutions that can provide the condition for such trust (although, in my view, speaking the same language is a necessary, but not sufficient, condition for the cultivation of trust that is essential for the sustenance of deliberative democracy). In the communication age where the deliberative process is going to be conducted through the media, especially the electronic media, "the presence of a shared media operating in a common language"[162] will be needed. Dieter Grimm makes this point with reference to Europe:

> [T]he absence of a European communication system, due chiefly to language diversity, has the consequence that for the foreseeable future there will be neither a European public nor a European political discourse. Public discourse instead remains for the time being bound by national frontiers, while the European sphere will remain dominated by professional and interest discourse conducted remotely from the public.[163]

None of the above necessarily means, however, that multilingualism is inherently inconsistent with deliberative democracy in the context of linguistic federalism as I have sketched it out. There are a number of reasons why trust would not be a casualty in such a political arrangement. First, since all citizens would be required to be proficient in the national language, citizens would be able to have access to the thought process of other citizens and hence the notion of the incomprehensible "Other," which language differences are likely to engender, would be greatly reduced. Even if it were not mandatory that citizens be proficient in the national language, it is likely that most members of minority linguistic groups will elect to learn the national or official language as a second language because being proficient in such a language provides more opportunity for social mobility and reduces the transaction costs generally shouldered by minority language groups.[164] This may lead to what Patten calls "de facto convergence on a common (second) language or set of languages."[165] Thus, to the extent that there is going to be a common language at the national level (de facto or legally mandated), the risk that members of one linguistic group would think of members of another linguistic group as the incomprehensible "Other" is considerably diminished.

The second safeguard for trust built into linguistic federalism is the ability

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162.   Kymlicka, Territorial Boundaries, *supra* note 75, at 269.

163.   Grimm, *supra* note 53 at 296, *cited in* Kymlicka, *supra* note 75, at 269-70.

164.   Cornell & Bratton, *supra* note 10, at 621-23.

165.   Patten, *Political Theory and Language Policy, supra* note 8, at 703.

of linguistic groups to utilize their language as the medium of communication and deliberation at the local level. This would reassure them that they are indeed full partners in the political community, and thus incline them more to engage in good faith arguments in the national (or intergroup) deliberative process. Language recognition in the form of linguistic federalism is likely to reduce the feeling of linguistic minorities "of betrayal and alienation from the whole political community."[166] The valuing and affirmation of difference is often, paradoxically, the condition for cultivating trust.[167] A group whose identity is affirmed in the form of language recognition is less likely to feel that other linguistic groups within the political community threaten its cultural survival.

Third, as I argued earlier, linguistic federalism will provide linguistic groups the parallel public space for deliberation, which, in my view will not only reassure them about the secured nature of their status (culturally or otherwise) within the political community, but will also facilitate the deliberative process as well. How so? At the local level, there is likely to be a more extensive involvement among members of the linguistic group in the deliberative process if their language is the language of deliberation. This is partly because people are more likely to be most proficient in their local language than they are to speak any other language, especially if the country does not have high literacy rate. This is partly also because the language in which they deliberate will allow them to consider the entire range of their culture and history. As two commentators put it, "Each language has its own window on the world."[168] Also, because of the logic and virtue of federalism itself, the smaller the entity within which deliberation is to take place the greater the chance that it will be more participatory and inclusive.

It is reasonable to assume that the more deliberative the process at the local level, the more likely the inter-group or national deliberative process will be more inclusive and participatory as well. Deliberation at the local level establishes a genuine culture of deliberation which would facilitate the deliberative process at the national level. Moreover, the various linguistic groups would have had the space within which to prepare the condition for a fuller and more coherent presentation of themselves and their concerns to the national deliberative process. Linguistic federalism will allow linguistic minorities the condition for fuller self-presentation.

If one were to engage in a Rawlsian thought experiment by appropriating

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166. Patten, *Political Theory and Language Policy, supra* note 8, at 704-05.

167. *See* IRIS MARION YOUNG, JUSTICE AND THE POLITICS OF DIFFERENCE 156-191 (1990).

168. NETTLE & ROMAINE, *supra* note 89, at 14. *See also* KYMLICKA, *supra* note 153, at 83 ("Whether or not a course of action has any significance for us depends on whether, and how, our language renders vivid to us the point of the activity."); Cornell & Bratton, *supra* note 10, at 671 ("We are immersed into a world thick with meaning, meaning that is passed on to us in language. We rely on this language to give ourselves form slowly to distinguish ourselves from our surroundings.").

the "veil of ignorance"[169] as a representational device, it would appear that linguistic federalism is the arrangement that all linguistic groups would want to prefer. If a linguistic group does not know its strength in numbers or resources, but knows that it will share a political community defined by deliberative democracy with other linguistic groups, that group will likely choose linguistic federalism. It may not be implausible to conclude that an arrangement which would have gained the assent of members in a condition of equal vulnerability will have a good chance of both getting endorsement in real life and encouraging trust among members.[170]

VI.
CHALLENGES TO IMPLEMENTATION OF LINGUISTIC FEDERALISM

A. Selecting a National Language of Deliberation

Both in relation to linguistic federalism and the recognition of minority languages in situations of non-territorial-based linguistic minorities, I have argued for the adoption of a national language through which deliberation could take place at the national level. However, I have not indicated how that language should be chosen from among the various available languages. This is a difficult issue that would need to be considered in the light of the particular history and circumstances of a given polity. Some counties that have faced this issue have created a completely new language. Indonesia is a good example.[171] Others have adopted the language of the majority, but some may opt for the most marginal language so as to minimize intense conflict among relatively strong linguistic minorities on the issue of which language should be the national language. Still others have used a "neutral" (often colonial) language,[172] and

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169.   RAWLS, *supra* note 24 , at 118-23. Rawls used the representational device to refer to a circumstance where individuals who are motivated by self-interest but know no more about themselves or one another (such as whether they will be a linguistic minority or not, what resources they will command as individuals or as a group, etc.), except that they know that their society is subject "to the circumstances of justice and whatever this implies" (*id.* at 119), engage in deliberation to develop a conception of justice and to devise the basic structures of the society. For Rawls a just basic structure is one which will be adopted unanimously by individuals under the veil of ignorance. *See also id.* at 10-15.

170.   Perhaps one could also view arrangements that emerge from conditions of equal vulnerability as not only indicating consent on the side of the various linguistic groups, but also as "institutionalized fairness," to use a phrase from Stuart Hampshire. *See* STUART HAMPSHIRE, JUSTICE IS CONFLICT 79 (2000).

171.   Bahasa Indonesia, the national language, is strictly speaking, not a new language, but the transformation of a Malay language. *See* Jacques Bertrand, *Language Policy and the Promotion of National Identity in Indonesia, in* FIGHTING WORDS: LANGUAGE POLICY AND ETHNIC RELATIONS IN ASIA 263 (Michael E. Brown & Šumit Ganguly eds., 2003). *See also* ABRAM DE SWAAN, WORDS OF THE WORLD 81-95 (2001).

172.   Some West African states have adopted English or French as the national language. "Ethnic languages are normally not accepted as national languages wherever other groups fear 'tribal dominance' and prefer" colonial languages, which are viewed as "'tribally neutral.'" J. SCHMIED,

numerous other ways of choosing the national language remain to be imagined.[173]

B. Does Affirming Linguistic Multiplicity Undermine the Possibility of Change?

Assume that linguistic federalism would in fact facilitate rather than hinder deliberative democracy and at the same time protect an important aspect of people's being, their linguistic heritage. Assume also that this would reduce the risk of language-based conflicts. Further assume that in fact I am right in concluding that the condition of equal vulnerability would lead to linguistic groups opting for something like linguistic federalism. Would such an arrangement make it difficult for normal cultural and social changes to take place by seemingly naturalizing linguistic differences?[174] I think not, and offer three arguments in defense of this position.

First, the idea of linguistic federalism, as I outlined it, should not preclude the possibility of linguistic groups revising their ideals. The parallel domain in which linguistic groups imagine themselves is also one that would allow them to imagine themselves differently. There is nothing that precludes a re-imagining that would re-present or transform the particular language. In fact, the arrangement that I advocate may facilitate such changes. A group that feels secure about its position in the political community is more likely to engage in more candid self-reflection than one which views other groups as constant threats to its very existence as a cultural group.[175] The idea is to allow linguistic groups to decide

ENGLISH IN AFRICA: AN INTRODUCTION 27 (1991). Some West African states have adopted English or French as the national language. India could be given as another example of a country where a colonial language (English) is accepted as a national language partly because of its perceived neutrality in relation to the various linguistic groups. Amitav Choudhry, *India: Bursting at the Linguistic Seams*, U.N.E.S.C.O Courier, Apr. 2000, *available at* http://www.unesco.org/courier/2000_04/uk/doss24.htm ("Regarded as a 'neutral' language for wider communication, and the language of technology, modernity and development, English is also a social status symbol.").

173.   One criterion may be the relative richness of the language, how well developed it is and whether it will be able to accommodate many complex scientific and technological ideas and thus ensure a more robust deliberative process. The important thing is that, if done in the context of affirming the linguistic identities of communities, the language choice leads to less resistance and conflict. If a national language is coupled with rights and upholding local languages, the national language will cease to have such overwhelming symbolic value. More importantly, it will assist in the entrenchment of deliberative democracy in multilingual states.

174.   A similar argument has been directed at consociationalism, the theory that attempts to resolve the problem of severely divided societies by advocating the establishment of a grand coalition among the various blocs of the society with "segmented autonomy," "proportionality," and "minority veto." Arend Lijphart, *Prospects for Power Sharing in the New South Africa*, in ELECTION '94 SOUTH AFRICA: THE CAMPAIGNS, RESULTS, AND FUTURE PROSPECTS 221 (Andrew Reynolds ed., 1994). The argument is that "by freezing cleavages, a consociational regime may actually reinforce or, worse, create the conflict it is designed to solve." John S. Dryzek, *Deliberative Democracy in Divided Societies: Alternatives to Agonism and Analgesia*, 33 POL. THEORY 218, 223 (2005). *See also* Cass R. Sunstein, *The Law of Group Polarization*, 10 J. POL. PHIL. 175 (2002).

175.   One sees this phenomenon in the United States in the way that blacks often respond to problems within the community. One sees a closing of ranks whenever there is an allegation of mis-

for themselves whether their language becomes a soft or hard parameter.[176]

Second, in addition to the adoption of a national language, interethnic (interlingual) deliberation and accommodation could be promoted by a political arrangement that gives incentive to political parties to widen their support base.[177] This could be accomplished with cross-regional voting laws that require national political parties to compete in a certain number of regions and to win a certain number of votes in these regions to be elected to the federal government (legislative or executive). Such arrangements would ensure that strident identity-based political parties would not dominate national governments and sharpen and naturalize differences among the various linguistic groups.[178]

Third, a deliberative process that allows various linguistic groups to fully participate in the process is likely to usher in changes not only in relation to specific linguistic groups, but in the larger political culture as well. Those changes are likely to be more legitimate, fairer, and more stable. I think Richard Falk was right when he noted that diversity of cultural forms will ensure that changes will occur as a result of engagement of different lifestyles and modes of existence that "may provide models, inspiration, guidance, in the essential work of

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deeds or failings of some sort even when a serious reflection would have been to the benefit of the community. This is so because the white community is viewed as a constant threat to the welfare of the black community and such candid reflection is often thought to give the white community the ammunition to continue to do serious damage to the interest of the black community. The recent controversy concerning Bill Cosby's statement about poor black communities not holding up their end of the bargain is a good example. *See* Christopher John Farley, *What Bill Cosby Should be Talking About: It's Fine to be Critical. But Blacks Should be Working Together, Not Against Each Other*, TIME MAGAZINE, June 3, 2004 ("Last month, Bill Cosby broke the unwritten rule of keeping black dirty laundry in black washing machines.") *See also* M. Spencer Green, *Cosby Has More Tough Love for Black Community*, ASSOCIATED PRESS, July 2, 2004; ERIC DYSON, IS BILL COSBY RIGHT?: OR HAS THE BLACK MIDDLE CLASS LOST ITS MIND? (2005).

176.   I borrow the term "parameter" from Ronald Dworkin. *See* Ronald Dworkin, *Foundations of Liberal Equality*, *in* 11 THE TANNER LECTURES ON HUMAN VALUES 1, 70 (Grethe B. Petterson ed., 1990). Small language groups may, for example, decide not to use their language as the language of instruction, but rather may opt for the most widely used language. Thus, for example, in Switzerland many members of the Romansch-speaking community, which is "only a few thousand people," have apparently "successfully pushed to have most of their children's classes taught in German," because they believed that fluency in Romansch only will restrict opportunities for members of the group. JEFF SPINNER, *supra* note 162, at 148.

177.   For a detailed description of various election procedures that will provide incentives for interethnic dialogue and moderation see REILLY, *supra* note 2, at 8 ("One of the most feasible paths to such inter-group accommodation is to present political parties and candidates campaigning at elections with incentives to cooperate across ethnic lines."). Reilly calls this arrangement "centripetalism," "a political system or strategy designed to focus competition at the moderate centre rather than the extremes—primarily by presenting rational, office-seeking politicians with incentives to seek electoral support from groups beyond their own ethnic community." *Id.* at 11.

178.   Donald Horowitz has been arguing, in my view quite correctly, that devolution ought to be accompanied with the building of institutions that would offer political incentives for interethnic accommodation. *See* Horowitz, *Democracy in Divided Societies*, *supra* note 17, at 34-37; HOROWITZ, ETHNIC GROUPS IN CONFLICT, *supra* note 17, at 563-652; DONALD HOROWITZ, A DEMOCRATIC SOUTH AFRICA?: CONSTITUTIONAL ENGINEERING IN A DIVIDED SOCIETY 124-226 (1991).

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world order redesign."[179]

C. Linguistic Federalism and the Availability of Exit as an Option

There are of course some burdens that linguistic groups whose languages were not chosen as official or national languages have to shoulder. One burden that is often mentioned is the possibility of competitive disadvantage—children from those linguistic groups not chosen will in the long run be disadvantaged, because they may not be sufficiently proficient in the dominant national language and consequently unable to be fully competitive on a national scale.[180] As a matter of simple logic, a person whose mother tongue is the national language might have some competitive advantage over those whose language has not been chosen as a national language. However, the risk of serious disadvantage is minimized by the structure that I envision. First, the requirement that the national language be a medium of instruction above certain grade-levels in every linguistically defined territory ensures that an acceptable level of proficiency is attained by all members of the national community. Second, for those who wish to use the national language from the beginning, exit is available both at the individual and the federal unit level. At the individual level, a person (or his guardian) can elect to use the national language as his primary language or to go to a school conducted in the national language.[181] This apparently happens in relation to some linguistic groups in the Ethiopian federation where some small linguistic groups have chosen to send their children to schools conducted in Amharic, the national language, rather than to schools where the medium of instruction is the local language. The same is true in Tibet where parents send "their children to study in Chinese cities since they believe that acquiring a Chinese education would help their children compete better with Han people in the job market."[182] And at the unit level, the federal entity might elect to use the national language as its official language. The point, however, is that the particular individual or community would have made the determination itself as to what burden to carry and what cost to tolerate for making the choice it has made.

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179.   Richard Falk, *The Rights of Peoples (in particular Indigenous Peoples)*, in THE RIGHTS OF PEOPLES 23 (James Crawford ed., 1988).

180.   *See* KUKATHAS, *supra* note 93, at 238. Kukathas makes the point not so as to embrace it but so as to critique it.

181.   In fact, it is not only individuals that have decided to opt out, but one of the linguistic regions as well. One of the nine linguistically organized states, the Afar State, apparently opted to utilize Amharic, the national language, as medium in preference to its own language. *See* Thomas Bloor & Wondwosen Tamrat, *Issues in Ethiopian Language Policy and Education*, 17 J. OF MULTILINGUAL AND MULTICULTURAL DEV. 321, 328-29 (1996). The Ethiopian Constitution allows the member states of the federation to "determine their respective official languages." ETHIO. CONST. art. 5.

182.   *See* Patriica Schiaffini, *The Language Divide: Identity and Literary Choices in Modern Tibet*, 57 J. INT'L AFF. 81, 89 (Spring, 2004).

VIII. CONCLUSION

Though it has its critics, the notion of deliberative democracy seems rather sensible. After all, who would disagree with the proposition that a polity should address concerns and resolve disagreements and conflicts among its citizens through a process whereby citizens offer reasonable arguments to their fellow citizens? Deliberative democracy is a process that promises a good faith engagement among all segments of the polity with the purpose of pursuing the public good. The question then is what sorts of language policies are appropriate for such a process.

As the imaginary conversation at the beginning of the article was meant to suggest, theorists of deliberative democracy do not often ask themselves how deliberative democracy would work in nation-states that are made up of many linguistic groups, each of which seeks to make its language the language of public communication. The leader of the Tamil Tigers is right. If deliberative democracy is going to be relevant to, or to be taken seriously by, much of the world, its defenders have to confront directly the fact that most countries are defined, and indeed divided, by many languages.[183]

I have indicated in this article that there may be a range of responses available to the deliberative democrat. Unlike what I assumed would be the response of most deliberative democrats who view multilingualism as a hindrance to deliberative democracy, and even to democracy itself, I have attempted to show that multilingualism is perfectly compatible with a version of deliberative democracy. In fact, multilingualism may even be better in promoting deliberative democracy to the extent that it facilitates two important conditions for genuine deliberation: it will allow the various linguistic groups to present themselves in the deliberative process fully both in the quantitative and qualitative sense. Quantitatively, something like linguistic federalism will allow more members of linguistic minorities to participate in the deliberative process. Qualitatively, linguistic minorities will be able to present themselves more fully to the deliberative process because the use of their language would have allowed them access to the entire range of their history and culture. Seyla Benhabib observes that "[l]egitimacy in complex democratic societies must be thought to result from the free and unconstrained public deliberation of *all* about matters of common concern."[184] I have argued in this essay that "free and unconstrained public deliberation" will be possible only when all (including linguistic minorities) are able to participate *fully* "on all matters of common concern." Full participation entails participants being able to bring *all* of who they are (not just part of who they

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183. Habermas has dealt with the language issue in relation to the European Union only in passing and then only to avoid the issue by remarking that English has almost become the "second first language" of Europeans. *See* Jürgen Habermas, *Remarks on Dieter Grimm's 'Does Europe Need a Constitution?'* 1 Eur. L. J. 303, 307 (1995), *reprinted in* HABERMAS, THE INCLUSION OF THE OTHER, *supra* note 35, at 155-61.

184. Benhabib, *supra* note 31, at 68 (emphasis added).

are) to the deliberative process. For linguistic minorities, this means ensuring that their language becomes part of (and a means of) the deliberative process in some way as well.

Contrary to Brian Barry's assertion that the politics of difference is at odds with the politics of solidarity,[185] I would argue that the politics of difference is, in fact, the condition for a more durable and defensible politics of solidarity. Indeed, in an earlier work I specifically tried to show how the language arrangement that this essay recommends is premised on the desire to defend the politics of solidarity and on the belief that institutionalized multilingualism is the best route to a more sustainable and a more just form of solidarity in much of the world that is divided, often severely, on the basis of linguistic differences. To embrace linguistic federalism does not necessarily mean abandonment of the politics of solidarity or of the importance of deliberation in the formation of that union. Rather, to embrace linguistic federalism is to recognize that many states are composed of a plurality of contending linguistic groups and to suggest that, under those circumstances, we broaden our conception of when deliberative politics and societal solidarity might be achievable. Recognizing the pluralities "of attachments, identifications, and spaces of political action" in the world around us poses no great threat to societal solidarity. Neither is the belief that the state does not and should not have "the ability to colonize the terms of collective identity."[186]

Our choice is not between deliberative democracy on the one hand and the acknowledgement and affirmation of linguistic differences on the other hand. Rather, the choice is whether or not there is going to be full and genuine deliberation. There cannot be a community of participation without a community of communication, but that does not lead to the conclusion that unilingualism is the only choice compatible with deliberative democracy. A community of communication, I have argued, can be constitutionalized while affirming linguistic pluralism. Indeed, in many instances affirming linguistic pluralism may be a necessary condition for a genuine form of deliberative democracy.

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185.   "The 'politics of difference' thus rests on a rejection of what we may call, in contrast, the politics of solidarity." BARRY, *supra* note 61, at 300.

186.   *See* William Connolly, *Beyond Good and Evil: The Ethical Sensibility of Michel Foucault*, 21 POL. THEORY 365, 380 (1993).