NÚMERO 197

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An Antitrust Theory of Group Recognition

JUNIO 2007

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Abstract

This paper proposes a domination-sensitive litmus test for determining whether a national state's courts and legislatures should give prima facie standing to a national minority's claim to group recognition. Analogizing from U.S. constitutional jurisprudence, we argue that a national state's courts and legislatures should strictly scrutinize that national state's behavior —and consider serious remedial action to correct it— to the extent that the national minority in whose name the claim is made can be shown to (a) *have been symbolically oppressed in the past, and to* (b) *be materially disadvantaged at the time the claim is made. We demonstrate the appeal of the test, and show its superiority to the leading contemporary normative theories (Barry, Tully and Young). We focus on the practical problem of establishing prima facie standing in four cases, two that are relatively easy (Afrikaners and Cherokees) and two that are hard (Quebecois and Catalans).*

Resumen

Este artículo propone una prueba sensible a la dominación para determinar si las Cortes de un Estado nacional y sus legislaturas deben aprobar prima facie la demanda de una minoría nacional de ser reconocida como grupo. En analogía con la jurisprudencia constitucional estadounidense, defenderemos que las cortes de un Estado nacional y sus legislaturas deben escrutar la conducta del estado nacional estrictamente —y considerar seriamente una indemnización para corregirlo— hasta el grado en que la minoría nacional en cuyo nombre se demanda pueda mostrar (a) *que se le oprimió simbólicamente en el pasado, y* (b) *que es perjudicada materialmente actualmente. Demostraremos la validez de la prueba, y su superioridad frente a las principales teorías normativas contemporáneas (Barry, Tully y Young). Por lo tanto, nos enfocaremos en el problema práctico de establecer un reconocimiento prima facie en cuatro casos, dos relativamente fáciles (Afrikaners y Cherokees) y dos difíciles (Quebecois y Catalans).*

Introduction

In this paper, we advance an antitrust theory of group recognition. This theory follows from an ethical commitment to non-domination. We introduce a sliding-scale standard of scrutiny for evaluating demands for group recognition. The standard is presented, explained, and applied to the particular sorts of demands for group recognition made in the name of national minorities. In section one, we explain and justify what we mean by national minorities. Then, we generate a standard for evaluating the demands made in their name by analogizing from some jurisprudence in U.S. constitutional law.

Our standard holds that a claim made in the name of a national minority is valid to the extent that *(a)* that group has been wronged symbolically and *(b)* that group is in a position of material disadvantage at the time the claim is made. In this section, we also elaborate the theoretical presuppositions of our standard. In particular, we explain the distinction between material and symbolic wrongs, and we explain why it is necessary to incorporate sensitivity to historical injustice into the evaluation of group recognition claims. In section two, we describe the sorts of demands made in the name of national minorities —for brevity's sake, categorized as matters of compensation, culture and territory. In section three, we discuss remedies, and in particular we explain that there need not be symmetry between the kind of wrong suffered by a national minority and the sort of remedy to which it is entitled.

Remedies that involve the redistribution of resources, for example, may sometimes be appropriate for rectifying past symbolic wrongs. In section four, we proceed to discuss two easy cases —the Afrikaners in South Africa and the Cherokees in the United States. In section five, we demonstrate that the leading alternatives to our standard all fail to get the easy cases right. In section six, we address the objection that our standard only works in the context of easy cases. We discuss two hard cases —the Quebecois in Quebec, Canada, and the Catalans in Catalonia, Spain. We demonstrate that our standard generates clear, distinct and coherent results about these two hard cases. In the conclusion, we specify the limits of our argument.

1. Standard for Evaluating the Demands of National Minorities

A national minority is a group that claims ownership rights over a given territory within a larger national state.[1] It is most important to be clear that national minorities are different from immigrants. They can be distinguished from immigrant minorities because the latter do not make claims to territorial ownership. National minorities also make claims to recognition as a distinct society. This is something that immigrant minorities may or may not make a claim to. Why do we distinguish between national versus immigrant minorities? Obviously the distinction between national minorities and immigrant minorities breaks down ultimately at some point in historical reflection, the farther back one goes in the analysis of history. Yet, for our purposes, what is important is contemporary self-understandings, which in turn engender distinct political dynamics.[2]

Having thus defined what we mean by national minorities, let us now turn to outline a standard for evaluating their demands. Constitutional jurisprudence in the United States on the interpretation of the equal protection clause in the fourteenth amendment involves the application of different levels of scrutiny according to the prima facie gravity of the state's alleged violation. The intellectual core of this jurisprudence maintains that some prima facie wrongs should be analyzed by whether or not state activity meets a "rational basis" test. In particular, a state's activity passes constitutional muster if it is "rationally related" to the pursuit of a "legitimate state interest". A more exacting standard, known as "strict scrutiny", is applied to more severe prima facie wrongs. On this test, a state's activity must be shown "necessary" to the pursuit of a "compelling state interest".[3] For a variety of reasons, a lot of people both on and off the court have been dissatisfied with this dichotomous framework. Most important among these reasons is that a case's result tends to be mechanically derived by whether or not "rational basis" or "strict scrutiny" is applied. Justice Thurgood Marshall (1967-1991) developed an alternative, related framework for equal protection analysis that conceives of a "sliding scale" between "rational basis" and "strict scrutiny". Drawing on the Court's own authoritative decisions, particularly in the area of gender discrimination, in which the court appeared to apply something many scholars refer to as "intermediate scrutiny", Marshall's framework is meant to be responsive to a

[1] For our purposes, a national state is simply a political unit recognized as a fully sovereign entity within the modern world state system. In particular, as sovereignty is understood in international law. On the formation of the modern system of national states, see inter alia, Anderson (1974), Bull [1977] (1995), Poggi (1978) and Tilly [1990] (1992).
[2] On the distinction between immigrants and national minorities, we converge with Kymlicka (1995).
[3] For a good discussion of constitutional jurisprudence generally and levels of scrutiny in particular, see the widely used treatise by Tribe [1978] (1988).

spectrum of prima facie wrongs.[4] This spectrum includes: *(1)* prima facie wrongs which are clear violations of the equal protection clause (*i.e.* those the Court discovers via the application of strict scrutiny), *(2)* prima facie wrongs which are clearly *not* violations of the equal protection clause (*i.e.* those the Court discovers by applying rational basis review) and *(3)* prima facie wrongs which are harder to figure out from the standpoint of equality because of their complexity.

The problems that Marshall's "sliding scale" is responsive to are from a value-analytic standpoint essentially the same as the problems that Courts around the world face in adjudicating the claims made by national minorities. As we use it, the sliding scale is not meant to substitute categorical tools for classifying and deciding on the validity of group recognition claims. Rather, like Marshall's own sliding scale, it is an intellectual device for portraying the normative continuum on which these claims stand or fall. By analogy to the language of U.S. equal protection jurisprudence, we propose a three-category framework for classifying the validity of claims made in the name of national minorities.

A national-state's activity is subject to *strict scrutiny* when its alleged victims are groups who: *(a)* prima facie have strong evidence that they have suffered historically from symbolic domination; and *(b)* in the present are suffering from material disadvantage. A national-state's activity is subject to *intermediate scrutiny* when its alleged victims are groups who: *(a)* prima facie have some evidence that they have been dominated symbolically in the past, and about whom *(b)* there is uncertainty whether they are materially disadvantaged in the present. A national-state's activity is subject only to *ordinary scrutiny* when its alleged victims are groups who: *(a)* prima facie have not been dominated symbolically in the past; and who *(b)* are materially advantaged in the present. Notice that there are two dimensions operative here. The first is past versus present. *Past symbolic* wrongs matter. They are what give claims made in the name of national minorities the specific salience that they have. (This is something that, to be sure, claims made by some immigrant groups have as well, for example the claims made by immigrants coming from countries formerly occupied by colonial powers). On the other hand, *present material* disadvantage matters too. It is a decisive feature of the concern that a national minority's claim to recognition ought to elicit juridically. As our italics indicate, the second dimension of our framework involves a distinction between the symbolic and the material aspects of social reality.

Among the various goods that human beings have and are able to pursue, it is useful to distinguish between two general types —material goods and symbolic goods. Material goods are those that enable human beings to

[4] See particularly Marshall's reasoning in San Antonio Independent School District v. Rodriguez (1973) and Regents of the University of California v. Bakke (1978).

consume. Symbolic goods, on the other hand, enable human beings to experience meaning and to communicate. As classical political philosophy and most modern social theory recognizes, human societies are constituted by the complex of rules through which their members distribute consumption power and regulate meaning and communication.[5] The evaluation of human societies by principles of justice requires sensitivity to the difference between wrongs suffered in respect to material life and wrongs suffered in respect to symbolic life. In the particular sort of problem posed by claims made in the name of national minorities, the social-theoretic distinction between material wrongs and symbolic wrongs is especially salient. For, as we shall demonstrate shortly, a *sine qua non* of these claims is the demand for substantial change in the way a national-state's cultural life (meaning and communication) is governed and more generally organized.

2. What National Minorities Want

Let us now clarify what national minorities want. We conceptualize the entire range of claims made by national minorities as matters of territory, of culture, and of compensation. Bearing in mind that this threefold typology of claims is not meant to create closed sets, let us first distinguish between territorial aspirations and cultural demands. National minorities often aspire to self-determination —at the extreme, to full membership in the internationally-recognized legal community of independent national-states. Short of legal monopoly over the government of a given territory, national minorities often aspire to favorable changes in the structuring of taxing powers and of a national-state's over-all taxation burden. Other aspirations that are usefully classified as matters of territory include: *(1)* constitutional changes in the direction of increased consociationalism, *(2)* the creation of federal (as opposed to unitary) judicial powers, *(3)* powers to form their own foreign associations and foreign policy more generally with the governments of other national states, *(4)* independent representation in international organizations and *(5)* consonant with a general aspiration of increased control over a given territory, an independent police force and an independent immigration policy.

In addition to all these territorial demands, national minorities make a host of cultural demands as well. These include various concerns about cultural *autonomy*. Perhaps the most conspicuous arena in which the demand for cultural autonomy is expressed is in the reform of the formal educational system. In the extreme, national minorities may demand complete authority over the content of formal education, or short of that, they may demand a

[5] There have been several prominent expressions of this distinction between symbolic and material goods. Examples from modern social theory include Durkheim (1968), Bourdieu (1990) and Habermas (1984).

disproportionate say over the content of the curriculum. For example, national minorities demand increased authority over the type of history that gets taught in school and the language or languages in which instruction is done. National minorities' concern about cultural autonomy often focuses on the formal educational system since this is the most important arena for socialization of children outside of the home. National minorities often expect that today's children will become tomorrow's nationalists, provided that a curriculum more agreeable to their respective nationalist ideologies can be implemented. This is no surprise, since it is a commonly held belief that future generations will uphold the ideologies and basic political beliefs that are propagated through the standard curriculum.

Primary socialization, in particular through the formal educational system is thus a major focus of political conflict over national minorities' demands for cultural autonomy. Other salient foci include the operations of the political administration and the regulation of social and economic life. National minorities often demand that the personnel that are employed in the political administration be fluent in their respective language or simply belong to their ascriptive group. National minorities often demand that their language be the dominant medium through which laws are written, procedural rules are promulgated, and everyday business is carried out within the hallways of state capitals and municipal offices. But national minorities are not just concerned with the running of government alone. National minorities are concerned more broadly with the ecology of cultural space. They thus often demand that their respective language be the dominant medium in which all social life is conducted. They sometimes go so far as to demand that private businesses reform the way they operate. For example, they may demand that private businesses label their products, that they advertise, that they ensure the fluency of their employees, and that they provide services for consumers in their preferred language. Indeed, when national minorities have a distinct religion, they may demand that both politics and business as well as personal behavior make substantial deference to the tenets of their religion. In fact, on this point of authority over personal behavior, both the religious and the linguistic types of national minorities can be insistent that generalized conformity be forthcoming from all inhabitants of the national minority's claimed territory.

We've talked about national minorities' territorial and cultural demands. Recall that there is a third sort of matter implicated in the specificity of national minorities' claims to group recognition. National minorities' demands for group recognition invariably stem from a received sense of historical injustice, and thus the conceptual frame of compensatory justice and its several problems has to be invoked. Characteristically, national minorities claim that in the past, they (*i.e.* their ancestors or they themselves earlier in life) were wronged by the national state. Therefore, today, measures should

be taken to compensate for this historical wrong. The nature of the putative wrong varies from case to case, but in all national minorities' arguments for group recognition, the wrong which is the source of their grievance has an irreducible symbolic dimension. These points deserve emphasis, for it is important to remember the specificity of the argument we are making in this paper. We are not dealing with claims made about interstate injustice or class injustice or injustice perpetrated upon immigrant groups. We are only concerned to clarify and to make more tractable demands for group recognition made in the name of national minorities. For this purpose, the compensatory justice features of their demands require explicit and careful attention.

Some people would object that claims on behalf of national minorities are not always analyzable as arguments about compensatory justice. Our reasons for viewing them this way are both scientific and pragmatic. True enough, some national minorities sometimes argue, "we should be able to withhold our taxes because we are a nation". But as an argument, the structure of such a claim is not even a prima facie cognizable normative proposition. Our objective is not simply to categorize the various discourses by which the demands of national minorities get expressed. Instead, our aim is to provide a normative analytic apparatus for deciding the merits of real-world arguments made inside courts and legislatures. Consequently, we want to construct a framework that registers the structure of the propositions invoked in the most plausible way possible. Viewing these arguments as demands to compensate for past wrongs is indispensable to this evaluative enterprise. Without information about a given group's historical experience of subjection, there is no principled way to both be responsive to the group's demand for recognition and the normative merit of their demand.

Another more pragmatic reason for understanding claims made in the name of national minorities as compensatory justice claims has to do with the tight connection between the concept of compensation and the practical structure of legal remedies.

3. Remedies

Recall an implication of our standard for evaluating a national state's ostensive duty to consider a national minority's claim to group recognition. To have what jurists call prima facie *standing*, to get a hearing on their claim, a national minority must first show that it has suffered a symbolic wrong in the past. The first hurdle a national minority's argument must overcome, that is, is to demonstrate an historical wrong. Expressed simply, that at some point in the past the national state (or its legal ancestors) perpetrated some damage to the national minority's mode of ascribing meaning and engaging in communication. A national minority must show that there is some wrong for

which *compensation* is owed. Some sort or another *remedy* is needed to compensate for this past wrong. What sort of remedy is appropriate as compensation for a given past wrong? One might think that the answer to this question depends upon the specific nature of the past wrong. And in part this is true, the reasons people have for demanding recognition for a national minority have substantial connection with the specific way in which the history of its grievance is understood.

If, for example, a national minority's religion is thought to have been marginalized, silenced, or otherwise oppressed in the past, one might think that an appropriate remedy today must involve the exercise of this religion in the context of education, political administration, and other arenas of social life within the territory that such a national minority takes to be its homeland. But, aside from the individual freedom problems related to the articulation of religious authority within a modern national state (indeed, language is just as pervasive an "institution" as religion is), there are several reasons of a pragmatic nature as well as some important moral considerations that tell against drawing too tight a link between the currency of past harms and the currency of would-be present remedies. In particular, perhaps one of the most controversial theses that make up our argument is that material remedies are often the most appropriate to compensate for past symbolic wrongs.

Of course, we agree that a compensatory remedy must in a certain significant sense "fit", and that fittingness has to be determined in part by an historical analysis of the nature of the alleged past wrong. But there is a twofold sense in which the historical analysis is helpful in determining an appropriate compensatory remedy in a given dispute. On the one hand, first, the historical analysis will tell us when some sort of authority over the symbolic life of a given territory is in fact the most appropriate type of remedial measure. On the other hand, when the nature of an historical wrong is shown to be less severe than what can most plausibly be claimed on behalf of a national minority's demand for group recognition, then the historical analysis may nonetheless justify some sort of compensation in the form of increased consumptive power. Rather than to continue this necessary but abstract discussion of the features of our framework, let us put it to use in the context of what should be easy cases for *any* normative-analytic theory of group recognition of interest not only in the comfortable armchairs of academic life but also in the legislatures and courtrooms where decisions on these matters are made. From our tone, it should be clear that while we are indebted to the substantial body of literature that has accumulated over the last couple of decades on this topic in the social sciences and in philosophy, we continue to be dissatisfied with the lack or misguided purchase on specific cases obtained by the various normative-analytic theories of widest currency today. Before proceeding to a brief critique of the leading contenders in the

academic literature, let us describe the easy cases that serve as the basis for our criticism and also as a helpful abbreviation of the guiding intuition that underpins our argument.

4. The Easy Cases

If your theory for adjudicating a national minority's claim to group recognition cannot tell the difference between an Afrikaner and a Cherokee, then there is probably something wrong with your theory. This may seem like a facetious way to test the cogency of normative theories that aim to shed light on the major evaluative questions in this terrain. But the test has traction. While our own approach clearly tells against Afrikaner demands for group recognition, it clearly tells in favor of Cherokee demands for group recognition.

These are easy cases. Let us first sketch how our sliding scale premised categorical framework assesses each of these two groups' respective demands. To simplify matters, let us suppose that a legislator or a judge is faced with the question whether or not to provide a tax exemption from a general tax on income for the group. Note that a tax exemption is from the perspective of the national state a remedy that is of minimal concern compared to the prospect of having to redistribute authority, for example through power-sharing mechanisms such as consociational legislative arrangements. Mirror-like, from the perspective of national minorities the demand for a tax exemption is standardly regarded as a modest remedial measure, much less than what ideal compensation would amount to but something valuable nonetheless. Faced with this question, whether or not to provide such a tax exemption, should the respective national state's status quo tax code be subjected to ordinary (deferential) scrutiny, or should it be scrutinized strictly? To figure this out, the first step is to investigate whether a national state (or its legal ancestors) symbolically oppressed the group on behalf of which the tax exemption is demanded. If such an investigation reveals the perpetration of past symbolic wrongs, then the second step is to investigate whether the group suffers material disadvantage in the present.

Let us first consider the argument for a tax exemption (and a fortiori for more valuable remedial measures) in favor of the Afrikaners. It is weak. The Afrikaners did not suffer oppression, symbolic or otherwise, in the past. Once their claim, "we deserve a tax exemption because we are a nation" is rendered cognizable by adding the crucial qualifying clause "[a nation] that has been symbolically oppressed", it turns out to be false. Indeed, whatever may have been the fine detail of intra-colonial conflict in southern Africa, the Afrikaners undoubtedly benefited over the past hundred something years from (and indeed perpetrated major wrongs) against the native population of what is now South Africa (Adam and Giliomee, 1979). Note that the Afrikaners would fail to pass the second hurdle of our test as well, given that in the

present they continue to be in a position of material advantage by the relevant national (South African) standards. Specifically, from a material standpoint, the Afrikaners today fare substantially better than the majority of other South Africans.[6] From the perspective of our juridically-operationalizable framework, the national state of South Africa's activity (including the status quo tax code) as it affects the Afrikaners as a group merits the ordinary scrutiny that state activity standardly receives. The demand to recognize the Afrikaners even for the minimal purpose of obtaining preferential tax treatment cannot begin to appear like a matter of serious moral concern, since the historical record and the distribution of present-day resources both tell decidedly against granting the Afrikaners even prima facie standing.

Things are quite different in the case of the argument that the Cherokee nation merits compensation for the genocide which it suffered at the hands of the United States and its legal ancestors. When a Cherokee says, "we deserve a tax exemption because we are a nation that has suffered symbolic oppression in the past", a careful look at the historical record (indeed even a cursory look) should reveal substantial evidence to confirm the crucial empirical claim embedded in the statement. So the Cherokee demand passes the first hurdle of our test. As current historical scholarship demonstrates, the Cherokees, like other American nations, suffered genocide —perhaps the most horrible wrong a national minority is capable of experiencing (Smith, 2005).

To subject the United States to strict scrutiny, however, the second prong of our test requires that the American national minority at issue —in this case the Cherokees— be materially disadvantaged in the present. The baseline of comparison for determining relative material disadvantage is properly drawn from an index of per capita advantage within the entire national state. Notice that this is what we did en passant in pointing out that the Afrikaners would fail the second necessary analytical step to establish prima facie standing as well.

[6] Most work on social stratification across races/ethnicities in South Africa distinguishes between "African", "coloured", "Indian" and "white". Thus, data on social stratification for Afrikaners specifically, as a sub-group of whites, is hard to come by. Even so, the relationship between race/ethnicity and class is so stark that it is safe to infer that what is true for whites versus Africans generally is largely true for Afrikaners versus Africans as well. According to Jeremy Seekings (2003: 39), at the end of apartheid, the upper classes were "predominately white, with white households comprising between 55 and 70 percent of the total… The semi-professional, intermediate and petty trader classes [were] predominately African, with African households comprising 62 and 71 percent of the total in each. The core and marginal working classes and the residual 'other' classes [were] overwhelmingly African". Likewise, Leibbrandt, *et al.* (2004: 10), found that in 1991, whites comprised only 13.5% of the total population, but nevertheless enjoyed fully 59.5% of the share of total income.

The Cherokees' present-day condition is clearly disadvantageous when compared with the vast majority of other subjects of the national state.[7] Therefore, the United States' ongoing activity as it affects the Cherokees ought to be treated with strict scrutiny, at least by our legislatures, even if the U.S. Supreme Court wrong-headedly refuses to utilize the fourteenth amendment or other such constitutional tools to remedy past collective wrongs absent evidence of intentional past discrimination at the individual-perpetrator level.

5. Alternative Approaches

So from the perspective of our normative-analytic framework for evaluating claims of group recognition made on behalf of national minorities, the Afrikaners and the Cherokees are easy cases. Amazingly and sadly, this cannot be said for the state of the art academic literature on our subject. For the leading theoreticians of group recognition, Barry, Tully and Young, the Afrikaners and the Cherokees are indistinguishable. Although their theories manage to make these polar opposite cases indistinct in significantly different ways, for each theory the Afrikaners and the Cherokees are treated as if their respective demands were of more or less equal merit. To be sure, the three major theories we shall discuss make important contributions to the conceptualization of the relevant issues. But when all the theoretical cards are down and the theories' respective upshots are inspected, Barry, Tully and Young all manage to get the easy cases wrong.

Recall that the second prong of our juridical approach requires evidence of present-day material disadvantage. It is a significant merit of Brian Barry's *Culture and Equality* (2001) that it puts the questions of distributive justice (understood narrowly as questions having to do with how to distribute material goods) at the center stage of the political-philosophical debate over multiculturalism. We agree with Barry on the importance of the present-day distribution of material goods. That is why one might be led to think that there is a certain sense in which the question of whether or not the Afrikaner's claim to group recognition should be granted prima facie standing can be decided in the negative without even investigating their history. But Barry mis-specifies both the relevance of present-day material disadvantage and its proper role in a thorough evaluation of a national minority's claim to

[7] The United States census bureau collects data on "Native Americans" as a group, but not on Cherokees specifically. Even so, just like in South Africa, the overlap between class and ethnicity is so stark that it is safe to assume that what is true for Native Americans generally is largely true for the Cherokees in particular. According to the 2003 census, the three-year average estimate of percentages of all households in the country in poverty stood at 12.1% (and at 8.0% for whites); by contrast, the percentage of Native American households in poverty was 23.2%. Likewise, the median income for all households was $43,527 (and $46,004 for whites), compared with $33,024 for Native American households. And similarly, the percentage of the whole population without health insurance was 15.1% (and 14.1% for whites), compared with 27.5% of Native Americans.

group recognition. Barry reduces the problem of appropriate group recognition to problems of material distribution alone. For him, all inequalities cognizable by the theory of justice are expressible as inequalities of material goods. His *Culture and Equality* is in fact a star example of what goes awry when the "distributive paradigm" (Young, 1990) gets incorrectly conceptualized and misapplied.

It may appear that Barry gets the easy cases right —that is, his thoroughgoing materialism of the present tells prima facie against Afrikaner demands and in favor of Cherokee demands. But the construction of the easy cases thus far has assumed that the remedy under consideration for responding to the demand for group recognition is a tax exemption. We made that simplifying assumption only to demonstrate that our theory has cutting power even for purposes of what is a comparatively minor proposed social reform. Our theory, that is, is not too "group friendly". Certainly, neither is Barry's. Both his theory and ours are willing to consider (at least for prima facie analytic purposes) tax exemptions in favor of Cherokees and to dismiss demands for similar treatment on behalf of Afrikaners. But we reach the result on this question by a very different line of reasoning. For us, it is not enough to simply look at today's data on material distribution to decide whether or not a claim to group recognition made in the name of a national minority deserves prima facie standing. To illustrate the differences between our two-prong approach and Barry's thoroughgoing materialism, it is necessary to reduce the simplicity in the construction of what we have been calling easy cases.

There are two related analytical fronts on which complexity has to be increased a little. Suppose, not counterfactually, that the Cherokees demand the ultimate in group recognition, self government. What might Barry's theory instruct as a response to this demand, and what might our own theory instruct? From the standpoint of material disadvantage, in reference to the relevant U.S.A. national state baseline, the Cherokees' claim is reducible to at best whatever is required to provide them as individuals with opportunities for income and social position within the national economy that are basically equal to the opportunities of the mean or the median individual (or whichever individual is characterized as at the relevant equality-defined level of material condition). Barry defines the relative condition in terms of opportunities, and that might be thought objectionable by other materialist egalitarian individualists (*e.g.* Griffin, 1989). But that is not at the source of the problem as regards what Barry's theory implies about how to treat the Cherokee claim to political independence or some form of self-government close to full independence (at least from a legal standpoint). To address the most extreme variant of the demand for Cherokee group recognition would require an actual historical investigation into the various wrongs they've suffered at the hands of the United States and its legal ancestors. Our theory,

however, gives prima facie standing to the extreme variant of the Cherokee claim upon a prima facie inquiry into the veracity of their empirical claim about past injustice. Barry's theory, on the other hand, cannot even countenance the remedy of full self-government rights. The reason Barry cannot even consider such a remedy as an appropriate response to the Cherokee claim to group recognition is systematically related to his blindness about the salience of past injustice to the proper analysis of the sort of claims made in the name of national minorities. Barry's materialist egalitarianism is incapable of apprehending the difference between two very different sorts of claims made for group recognition.

On the one hand, there are claims which can in fact be addressed through the apparatuses of resource distribution within a given context for ordering political power, that is to say within a national state's tax code. A material distributive remedy is most fitting when the history of past oppression suffered by a national minority is less severe. But in cases such as the one at hand, in which wrongs such as genocide and expulsion from homeland are prima facie palpable upon a cursory review of state of the art historiography, the argument for prima facie standing should be derivable by *any theory* with serious pretensions to conceptualize the proper relationship between equality and group recognition.

Just as Barry's incapacity to register the possibility of self government as a proper remedy is systematically connected to his blindness about history, this blindness is in turn connected to his blindness about the difference between symbolic and material wrongs. How a national minority understands its own history and how others within their corresponding national state view that history differently (usually in a lot more benign light) is part and parcel of the way in which a court or a legislature ought to conceive of the wrong (with a view to evaluating the objective merits of the respective images of history in dispute), and correspondingly about the remedy for the wrong. Barry's theory cannot distinguish the claims made on behalf of a national minority such as the Cherokees at a given level X of material condition and the claims made on behalf of an immigrant group at the same level X. Indeed, Barry's theory cannot even distinguish the Cherokees from a random, numerically identical group of people who are also at level X.

It is crassly mistaken to assimilate the claims made in the name of national minorities with claims for material redistribution that can be made on evidence of material disadvantage alone. As is well known from the experience of individual litigants in tort disputes over the infliction of emotional distress, there are dimensions of social life the subjective evaluation of which cannot be reduced to the equivalent of material damages without both failing to give proper relief to victims and indeed engaging in yet another (symbolic) insult to their individuality.

James Tully's *Strange Multiplicity* (1995) is well aware of the symbolic wrong done in thinking about problems of group recognition in terms of the distributive paradigm alone. But he is so sensitive to both the salience of symbolic life, and of the importance of deferring substantially to the self-understood history of cultural groups, that he errs in the direction of a wholesale abandonment of the aspiration to objectively decide upon the veracity of competing historical narratives. The great virtue of Tully's intervention on the problem of group recognition generally and the specific sort of claims made by national minorities is that it is attuned to the way in which the history of symbolic oppression matters in constituting the sort of grievance felt by politicized cultural groups. As for the issue of national minorities' claim to group recognition, Tully is specially helpful in that he is attuned to how national minorities' own grievances are premised upon an understanding of how, as it were, their mode of understanding (symbolic life) has been historically subordinated or otherwise unjustly treated. (Indeed, this is what late twentieth century social theory refers to as the imperative of hermeneutics). Given how widely neglected this point is in much contemporary political philosophy and jurisprudence, Tully's intervention is salutary. But he goes so far in being sensitive to the importance of symbolic life and to the salience of the subjective lived experience of symbolic life that his theory ends up incapable of registering objective differences in the truth-value of contested historical narratives.

For Tully, a narrative representing the alleged historical oppression of the Afrikaners is just as worthy of at least a first hearing as is a similar narrative about the oppression perpetrated upon Cherokees. At least so long as people who self-identify as Afrikaner have grievances explainable in part by reference to a sincerely believed account of their group's passed oppression, Tully's theory implies that claims made on behalf of the Afrikaner group have prima facie standing. There is a certain sense in which the problem with Tully's theoretical disposition is the polar opposite of Barry's. Barry is insensitive to the historically-grounded specificity of Cherokee-type claims, insofar as his social ontology lacks a symbolic dimension. Tully, on the other hand, is insensitive to the asymmetries in comparative material advantage between the Cherokees in the U.S. and the Afrikaners in South Africa. Moreover, the reason he is insensitive to this feature of the normatively-relevant context in which these groups are making claims to group recognition is systematically connected to how his thoroughgoing subjectivism about historical truth implies that social reality is, as it were, "symbolic all the way down". Indeed, Tully is not only blind to the salience of contextually-relevant comparative *material* advantage. His thoroughgoing subjectivism implies that there is no way to distinguish asymmetries in comparative *symbolic* advantage. We would like to be careful not to caricature Tully in the manner in which post-modernist political theory and social science is often

mischaracterized. For in our critique of Barry's egalitarian materialism, we are certainly drawing on some of the very same points Tully and others (*e.g*. Balibar, 1991; Connolly, 1991, 1995 and Smith, 2003) have emphasized. We agree on the importance of substantial attention to the content of the self-understandings of national minorities, in particular to the self-understandings of their respective grievances. But while the perspective national minorities have on history is an important party of the proceedings at the historical court of first instance, it is not the last word at the high court of ultimate judgment. And indeed, a first hearing to establish prima facie standing and other aspects of justiciability (including the possibility of remedies) can be resolved with a simple dismissal for failure to state a plausible claim. *Strange Multiplicity* puts what might be perhaps somewhat pedantically called the first-person hermeneutics of group recognition at center stage. This contribution is undoubtedly commendable, and Tully certainly is aware that at least some material harms cannot be reduced to the content of their lived experience, even if he in principle denies (with his thoroughgoing subjectivism) that false consciousness is a possibility. But the theoretical apparatus he generates is incapable of giving any sort of systematic registration to the distinction between the symbolic and material dimensions of social life.

One of the most important features of Young's *Justice and the Politics of Difference* (1990) is the claim that certain questions of justice are basically problems that can be properly analyzed through the distributive paradigm of material resource allocation, but that there are other problems of justice that cannot be cogently addressed within the distributive paradigm and that indeed require different treatment. On this general point we agree with Young. But in her effort to design a sort of bureaucratic division of labor between the analytics of distributive politics and the analytics of difference politics, she mischaracterizes the possible specifications of the distributive paradigm and she thus misconstrues the possible range of remedies available to compensate for past symbolic oppression. Moreover, when the push of conceptual analysis comes to the shove of making judgments on the veracity of historical narratives, Young punts just as badly as Tully, despite her abstract theoretic focus on the in-kind distinction between material and symbolic goods.

Young's argument has two significant virtues. She registers that there is a distinction between the symbolic and the material dimensions of social life and that they have distinctive qualities. She is also sensitive to historical wrongs and in particular to the importance of first-person hermeneutics in the proper understanding of historical wrongs. For Young, there is a mirroring relationship between the type of injustice claimed (of distribution or of identity and difference) and the range of remedies that are appropriate in a given context of disputation over the merits of a given claim to group

recognition made in the name of a national minority. The important substantive thesis that motivates Young's critique of the distributive paradigm —that there is a qualitative in-kind distinction between material wrongs and symbolic wrongs— is certainly well taken. But emphasizing the importance of this insight misleads *Justice and the Politics of Difference* into rejecting uses of the distributive paradigm's optics for purposes of compensating for symbolic wrongs. The categorical distinction between distribution and difference implies that if self-government or something close to it or at least some sort of associational privilege distinct from the general populace is practically unviable, then there is no appropriate relief that can be made. With respect to Cherokee claims to group recognition, the crucial example on which Barry falters, Young falters as well by as it were prohibiting the currency of material goods to be exchanged as compensation for wrongs suffered in symbolic currency. On Young's account, a tax exemption —our ideal-typical material remedy— could in principle compensate for symbolic wrongs suffered by the Cherokees, *but only if Cherokees would themselves be willing to settle for such a remedy*.

It may seem to be splitting hairs unreasonably to complain about Young's subjectivism as regards core matters of difference politics such as the conditions in which material resources are a fitting remedy for past symbolic oppression. After all, as we recognize with respect to the level of the individual psyche, there is a certain sense in which a parent's loss of her child (through foul play or otherwise) is incapable of being priced. To repeat, Young's counsel against assimilating problems of group recognition into the language of material resource distribution is salutary. But there is an important analogy between tort jurisprudence in wrongful death litigation —and indeed in the practice of insuring for life— and the problem of irreplaceability faced in the analysis of how to compensate national minorities for past symbolic wrongs. The tort jurisprudence and the insurance industry recognize that from a parent's perspective the loss of a child is unpriceable. But that does not tell against engaging in the practice of putting a price in the currency of material goods on the loss for the purpose of compensating the parents to the degree possible for their grief. Indeed, in the case of remedies for past collective symbolic wrongs, there is an even stronger case for using material remedies even when the politically-relevant beneficiaries of those remedies would refuse them. In a situation that makes sovereignty an unviable option, tragically because of precisely the historical efficiency by which symbolic oppression has been perpetrated upon, for example, the Cherokees, material remedies *have to* be at least part of the compensation package designed to respond to the Cherokees' demand for group recognition. Indeed, there is substantial evidence that the sad plight in which not only the Cherokees but a whole panoply of American nations find themselves, is the

result in part of sticking exclusively to remedies that involve the *distribution* of authority rather than the redistribution of material resources as well.

Our italicization of the theoretical term distribution is meant to highlight what is yet another nuance featured in our juridical approach to the problems of group recognition. While a cogent theory of group recognition must follow Tully and Young in attending to the qualities of symbolic life as perceived in the first-person hermeneutics particularly and most importantly the perspective of the supposedly aggrieved group, as we have emphasized more than a few times, a cogent theory of group recognition must also be capable of conceptualizing the various first-person hermeneutical narratives relevant from an objective historical-analytic standpoint so as to then objectively evaluate the actual level and sort of concern that a group's alleged grievance ought to elicit. While picking on Young's implications in the case of the Cherokees then might at first seem like unnecessary hair-splitting, it is important to bear in mind that ultimately the upshot of her theory is thoroughgoingly subjectivist, and just like Tully's, at least in the context of concern in this paper, namely claims made on behalf of national minorities.

Young's erring toward subjectivism becomes even more clear when we think about the implications of her theory for the case of the Afrikaners. Young's insistence that symbolic wrongs can only be redressed through symbolic remedies, combined with her thoroughgoing subjectivism about the politics of difference systematically leads to the conclusion that disputes about the comparative merits of historical narratives can be resolved only through an egalitarian intersubjectivist procedure and not *objectively*. This is the major flaw in what is otherwise probably the best work of normative political philosophy on the politics of group recognition. And as we pointed out in our discussion of Tully, it is a very understandable error to commit. There is perhaps no better way to illustrate the importance of avoiding this error than by again pointing out what it implies as regards the Afrikaner claim "we deserve self-government or at the very least a tax exemption because we are a nation that has been symbolically-oppressed in the past". According to Young's theses about the irreducibly intersubjective constitution of symbolic life, there is no way to objectively distinguish this claim in the mouth of an Afrikaner from this claim in the mouth of a Cherokee. Moreover, the bureaucratic compartmentalization of the material/symbolic distinction that underpins Young's dichotomy between distribution and difference systematically leads her to disregard the salience of the fact that the Afrikaners in their normatively relevant context are *materially* advantaged.[8]

[8] Note that our criticism of Young is related but different from Nancy Fraser's (1995). See also Young's response to Fraser (1997) and Fraser's rejoinder (1997). Unlike Fraser, we agree with Young that it is important to remain dualist about the distinction between symbolic and material goods when it comes to assessing wrongs. Our disagreement with Young is that her theory disables the use of material remedies for past symbolic wrongs.

To sum up our critique of the leading normative approaches to our problem, for one noteworthy theoretical reason or another, Barry, Tully, and Young all fail the no-brainer litmus test of getting the distinction between an Afrikaner and a Cherokee right.

6. Hard Cases

But perhaps the import of our critique and the significance of our approach can best be demonstrated by applying our conceptual apparatus to a couple of hard cases. Unlike the Cherokee and Afrikaner cases, the two cases we shall now proceed to discuss do not lie at opposite extremes of our sliding scale. Instead, both the Quebecois in Quebec, Canada, and the Catalans in Catalunya, Spain, lie somewhere in the terrain of the set of cases in the middle of the scale. In levels of review parlance, the behavior of Canada as regards claims made in the name of Quebecois and the behavior of Spain as regards claims made in the name of Catalans, both merit intermediate scrutiny.

Recall that our two-prong test requires two demonstrations to establish prima facie standing. First, a national minority group has to be demonstrably a victim of symbolic oppression in the past. Secondly, it has to be materially disadvantaged in the present. Let us proceed to consider whether or not our hard case national minorities pass the first prong of our test. The claims of historical oppression made in the name of the Quebecois in Quebec, Canada, are premised on two processes by which they have been subordinated, *forced annexation* and *marginalization*.

With respect to forced annexation, the relevant historical process can be traced back to its coerced incorporation into the British Empire (*i.e.* the institutional ancestor of the contemporary Canadian state). In 1759, the British army in North America captured Quebec City, and by 1763 it had conquered the entire colony of New France. Following this conquest, British merchants immigrated to the newly-acquired territory in large numbers, and soon came to control the local economy there (Oullet, 1971). The legacy of this initial conquest has not been forgotten —for, as the Quebec government would put it in a 1978 statement of policy on cultural development, it effectively rendered Francophone *Canadians* "a conquered group, politically and economically dominated", and it "isolated" their businessmen "from the great North American trade" (Cook, 1986: 51). After this initial forced annexation, the Francophones would subsequently face a process of progressive marginalization within Quebec and within Canada more generally. The terms of territorial incorporation were revised on several occasions. First, after the influx of Anglophone "loyalists" from the United States who had opposed the revolution, the British would split their colony in two (Upper and Lower Canada), thus ensuring the Anglophone "loyalists" close to total control

over the northern half of what had previously "belonged" to the French. Next, in 1840, against a backdrop of ongoing and serious tensions between the Anglophone and Francophone communities, and in response to a failed rebellion against British colonial administrators (and members of the Church hierarchy who had been co-opted to serve as their intermediaries), the British decided to re-merge their two colonies into a single unitary province, out of the conviction that (in the words of Lord Durham) the only way to resolve the situation of "two nations warring within the bosom of a single state" was to encourage the absorption of the Francophones into the rapidly growing Anglophone population of Upper Canada. In 1867, the terms of incorporation were revised again, with the signing of the British North American Act, which created a federal structure with a strong central government that devolved a range of powers to the province of Quebec (within which the Francophones were thus assured demographic dominance); but at the federal level, the Francophones were "relegated to the position of a permanent minority, where their rights and powers were subject to the actions of the Anglo-Canadian majority" (McRoberts, 1988: 53). Such minority status would later be exacerbated, as the number of federated provinces eventually grew from four to ten (Watts, 1997).

So, both for reasons having to do with how they were originally subjected to forced annexation by the British and for reasons having to do with how they were subsequently increasingly marginalized through formal state restructuring, the Quebecois in Quebec can make a prima facie plausible case that they deserve standing. They thus pass the first prong of our test —*i.e.* that they have been symbolically oppressed in the past. Next, let us consider whether or not our other hard case national minority, the Catalans in Catalonia, Spain, also pass the first prong of our test.

The claims of historical oppression made in their name are premised on two processes by which they have been subordinated, the *destruction of their self-governing institutions* and the *repression of their linguistic expression*. With respect to the destruction of their self-governing institutions, this can be traced back to the instauration of the Bourbon dynasty and the defeat of the supporters of Archduke Charles in the War of Succession (1700-1714). In the wake of this war, in large part as punishment for their siding with the Archduke Charles, the victorious Phillip V would effectively do away with most of the traditional limits to royal authority in Catalonia, and indeed throughout all of the lands of the Crown of Aragón (to which Catalonia itself belonged). Specifically, in his *Decreto de Nueva Planta*, Phillip V would abrogate the Catalan Constitution, and thus destroy the legal basis for resistance in Catalonia to unification of the Spanish state (Linz, 1973: 49). As Catalanist historians have frequently stressed, in the ensuing decades, "Catalonia became a country overburdened with taxation in comparison with Castile… [while] the Spanish monarchy wiped out its financial deficit through

the fiscal exploitation" of the territories of the former Crown of Aragón (Balcells, 1986: 16). Even so, regional tensions would nevertheless remain rather lulled throughout the course of the eighteenth century, in no small part because of an economic revival in Catalonia related to its newfound access to the Crown of Castile's overseas imperial markets. In the nineteenth century, however, a critical attitude to the Spanish state would gradually re-emerge – for its corruption and for its neglect of the economic interests of Catalan manufacturers. Such growing discontent coincided with and facilitated the beginnings of a cultural revival under the sign of romanticism, characterized by the celebration of poetry competitions, and the emergence of a revitalized vernacular press. A complex process of social and cultural mobilization of romantic intellectuals and the petty bourgeoisie in favor of the regional vernacular and local culture was thus initiated (Vicens Vives, 1986). By the turn of the twentieth century, the Catalan upper bourgeoisie, followed by broad swathes of the Catalan middle classes, increasingly frustrated in their efforts to gain power in Madrid, began to think that a more effective solution to their problems could be found by going their own way —that is, by recuperating some form of regional autonomy or self-government (Carr, 1966). By this point, these territorial demands for self-government had become intertwined with the cultural demand for freedom of linguistic expression in the regional vernacular in the public sphere. In 1914, the nationalist movement, organized in the *Lliga Regionalista*, was able to get the government of the Restoration monarchy to grant Catalonia a limited degree of autonomy, by creating the so-called *Mancomunitat de Catalunya*. The *Lliga* would use its power to promote expression in Catalan in a variety of spheres of social life. But in 1925, Primo de Rivera would disband the *Mancomunitat*; and during his dictatorship, all of the linguistic and cultural measures that the *Lliga* had promoted would be rolled back [Termes (1987) 1999]. Even so, with the consecration of the Second Republic in 1931, Catalonia was again granted a significant degree of autonomy; but with the defeat of the Republic in the Civil War at the hands of Francisco Franco's *nacionales*, regional autonomy would be rolled back once more. After the war, the victorious Franco dictatorship would rigorously repress the Catalans' self-governing autonomy and their linguistic expression. In addition to again abolishing the Catalans' self-governing institutions, the regime entirely excluded the regional vernacular from the public sphere [Riquer and Culla (1989) 2000]. Limited expressions of culture in it would only become possible —save very few exceptions— in the 1960s. Meanwhile, all citizens would be actively encouraged to "speak the language of the Empire" (Benet, 1978).

In sum, both for reasons having to do with how they have been subjected to the destruction of their self-governing institutions on several occasions and for reasons having to do with how they have been subjected to the repression of their linguistic expression, the Catalans in Catalonia can make a prima

facie plausible case that they deserve standing. As such, like the Quebecois, they too pass the first prong of our test —*i.e.* they have been symbolically oppressed in the past.

It remains to be seen, however, whether our two hard case national minorities meet the second prong of our test for establishing prima facie standing —whether, that is, they are materially disadvantaged at T1. Before proceeding, to discuss the specifics of each case, it is necessary to reflect a little on how the salient condition in this second prong is to be measured. How, that is, should material advantage be determined? We propose a mixed approach for determining the material advantage of a national minority. Two relevant issues to determine are a national minority's share of national GDP per capita and the national minority's position within its own region's class structure. A group's share of national GDP per capita is an important indicator of material advantage, since income and wealth are standard and good measures of material welfare and national GDP per capita is a good proxy for national income and wealth. But it is well known that income and wealth are insufficient indicators of material advantage, among other reasons because of the importance of relative deprivation (which has a subjective component). While subjective evidence can therefore sometimes be useful for detecting relative deprivation, it is unnecessary and may sometimes even be misleading (for reasons having to do with false consciousness). At any rate, the relative position of a group within a territorial region in various stratification dimensions is a good proxy for relative deprivation and more generally thus a good additional indicator of the material advantage that matters for our analytical purposes.

Let us proceed now to discuss the specifics of each case. An exact study of the Quebecois's relative material advantage at T1 would ideally be based on information about their condition in 1968, at the moment of the founding of the *Partit Quebecois*. It is at this point in the history of Canada that the claims for group recognition made on behalf of the Quebecois actually became politicized. And so their income and wealth within Canadian society and their social position within Quebec at this time are the ideal-theoretic data points for an exact analysis of the material advantage prong of our test. For several reasons having to do with cost, an exact analysis is impossible for us to offer in this paper; however, such an analysis is unnecessary for deciding the case, since common sense inferential reasoning can be used to induce the nature of their condition at T1 by reflecting on later data in light of historians' knowledge of how that data compares with the data one would find in an exact inquiry into T1. With this major point about induction in mind, consider that in 1990 the per capita GDP of Quebec was 93% of the per capita GDP for the whole country (Watts, 1997: 6). That is, the per capita GDP in Quebec was 7% less than the per capita GDP for the entire country. On the whole, people in Quebec were a little bit poorer than the average person in

Canada. As such, this may seem like a minor inequality and as such it is. But Quebec's share of per capita GDP should be contextualized with finer grained information about the Quebecois's income and wealth and social position more generally within Quebec. According to Dennis Forcese, British-origin and French-origin Canadians "occupied, as aggregates, different strata along the stratification hierarchy. To put it simply, those of British origin had tended in disproportionate numbers to occupy high social class positions of high income, prestige and power, while French Canadians had tended disproportionately to occupy lower-class social positions. Across the nation into the 1960s and 1970s, persons of British origin have earned approximately 10 percent more than the national average. This has been true of all the provinces separately, except for Newfoundland (where the labour forces is virtually of British origin, at 94 percent), and *Quebec, where in the 1960s those of British origin enjoyed a startling level of income superiority, 40 percent above the provincial average*" [Forcese, (1975) 1997: 83]. This general point is reinforced with male labor-force participation data in Quebec for 1971, a year very close temporally to T1 (see Table 1).

TABLE 1. ETHNICITY AND OCCUPATIONAL STRATA IN QUEBEC

QUEBEC (MALE LABOR FORCE, 1971)	ETHNIC ORIGIN	FRENCH	BRITISH ISLES	OTHER	TOTAL
	HIGH INCOME OCCUPATIONS	6.2	17.8	11	8
	BELOW-AVERAGE INCOME OCCUPATIONS	58.6	55.8	52.1	57.5
	UNSTABLE-EMPLOYMENT OCCUPATIONS	35.2	26.4	36.9	34.3

Source: Leslie (1977: 133).

While 17.8% of British origin Canadians in Quebec held high-income occupations, only 6.2% of French origin Quebeckers had such occupations. Conversely, at the low end of the labor pool, fully 35.2% of French-origin Quebeckers had unstable employment, while only 26.4% of British origin Canadians in Quebec were in such a situation.

So the Francophones in Quebec do in fact pass the second prong of our test. At T1, circa 1968, it is evident by induction that they found themselves in a saliently disadvantaged position from the standpoint of sociologically important measures of material welfare. Both in terms of their relative share of Canada-wide income qua members of Quebec province and in terms of their share of provincial income and occupational status, the Francophones in Quebec can make the case that at T1 they were materially disadvantaged.

Let us now proceed to consider whether the Catalans in Catalonia also pass the second prong of our test for prima facie standing. Recall that in our

analysis of the Quebec case we specified T1 at 1968 because that was when the group recognition demands of the Quebecois became originally *politicized* in the contemporary era. The question of how to specify T1 in the case of the Catalans in Catalonia is complicated by the ambiguous status of democracy in post World War II human rights thinking. And we do not wish to commit ourselves one way or another on whether democracy conceived along some sort of liberal constitutional lines is a necessary feature of a national state's capacity to legitimately design policy of national minority group recognition. But since the fall of the Soviet Union, human rights discourse and political theory more generally has taken an even more decided stance in favor of what Robert Dahl calls polyarchy at the national state level (Dahl, 1971). The transition to democracy conceived as polyarchy was initiated in 1977 with the first elections after the death of Franco and the regime transformation in Spain from non-democracy to polyarchy was completed in 1978 with the passage of a new Constitution (Linz and Stepan, 1996). While Catalan demands for group recognition had in fact become politicized at the tail end of the old regime, at least as early as the mid-sixties, it is best to specify a T1 at some point in the post-Franco era, given the salience of liberal-democratic ideals today. And indeed, the Catalan demands for national minority group recognition reparations were a major part of the set of politicized issues that were addressed throughout the course of the constituent debates in Spain from 1977-1978. The ideal data points for this case, then, would be about the Catalans' situation during precisely this period.

Like the ideal data points for the Quebec case, reasons of cost again prohibit us from presenting about the ideal data points about Catalans in Catalonia at T1. Nevertheless, again like our treatment of the Quebec case, it is possible to infer inductively from data that is at our disposal. Consider, for example, that in 1975 the per capita GDP in Catalonia stood at 128% of the nation-wide average. In other words, people in Catalonia were on the whole 28% richer than the average person in Spain (Castells and Parellada, 1998: 496). This is by itself rather significant; but the comparatively-high income share of Catalonia is compounded by the advantaged social position enjoyed by Catalan-speakers in Catalonia itself (see Table 2).

TABLE 2. ETHNICITY AND OCCUPATIONAL STRATA IN CATALONIA

MOTHER TONGUE	CATALAN SPEAKERS	CASTILIAN SPEAKERS	TOTAL
PROFESSIONALS/HIGH-INCOME OCCUPATIONS/HIGH LEVEL MANAGERS	31.8	12.2	20.4
MID-LEVEL ADMINISTRATORS/SALESPEOPLE	23.1	21.5	22.1
LOW-LEVEL SERVICE PERSONNEL/BLUE-COLLAR WORKERS	45.1	66.3	57.5

Source: Centro de Investigaciones Sociológicas, Study #2228 (1996).

In 1996, 31.8% of Catalan-speakers held more highly-valued occupations, compared to 12.2% of Castilian-speakers in Catalonia. And only 45.1% of Catalan-speakers had lo-level employment, compared with fully 66.3% of Castilian-speakers.

Thus, based on income data from 1975 and occupational stratification data from 1996, it is easy to infer, given historians' knowledge of Catalonia specifically and Spain more generally, that at T1 in Catalonia (1977-1978) Catalan-speakers were not in a materially-disadvantaged position (Balfour, 1989 and Linz, 1985). As such, the Catalans' claim for national minority group recognition fails the second prong of our test; consequently, they do not qualify for prima facie standing at T1.

It may be objected that the data we have reported provides an unsafe basis from which to infer the salient facts of each case at their respective T1, that our inference to the facts of T1 in each case is specious. For only data about T1 could really provide the informational basis needed to make a judgment in each case. For example, one might speculate that the Quebecois were actually better off than British origin Canadians in Quebec in 1968. And one might speculate that Castilian-speakers in Catalonia were materially better off than Catalan-speakers in 1977-1978. But such speculation is mere thought play. Our historical knowledge allows us to be confident that, if anything, the data we have selected to report understates the salient inequalities in each case. At T1, Quebecois in Quebec were worse off than they were later on (in the periods captured by our data). That is to say, at T1 they were actually more materially disadvantaged than they were at the specific times revealed in our data points. Similarly, the effect of using later data in the analysis of Catalonia underestimates the decisiveness with which the Catalan argument for standing at T1 should be rejected. For by the mid-1990's, the Catalan-speakers' material advantage over Castilian-speakers had been, if anything, somewhat assuaged.

The social changes in Catalonia that account for the reduction in material advantage enjoyed by Catalans involve complex processes of political-economic life in Spain and more generally in Europe that have, *as a by-product*, assuaged the advantaged-position of Catalans in Catalonia. These changes have not been the intended effect of Catalan autonomy-enhancing institutional reforms. It is noteworthy to observe, however, that in the case of Quebec the social changes which have led to a decrease in Quebecois material disadvantage *have been* in large part the intended outcome of deliberate Quebecois-empowerment policies. Arguably, the history of Quebec in Canada over the last few decades is an exemplary case of how policy-making can compensate for past symbolic oppression. Note that the facts of the Quebec case reveal an important feature of the intuitions that underpin our proposed two-prong litmus test of prima facie standing. There is a systematic relationship between the application of our second prong having to do with material disadvantage at T1 in light of the first prong having to do with past symbolic oppression. The history of Quebec demonstrates, practically as it were, that symbolically-mediated oppression can be compensated for in currency that cashes out and can be measured through a distributive optic. On some accounts, the Quebecois today have reached a position of material parity with British-origin Canadians in Quebec.

This brings us to an interesting question that remains. Should compensatory policies like linguistic qualifications for employment continue for a grace period even after such policies have, as in the case of Quebec, been successful in accomplishing parity of material welfare and social position? Should, that is, minoritarian language promotion continue to be operative even after the beneficiary group has achieved parity in terms of material advantage within its territory. We do not address this issue in this paper, and it is time to sum up our argument and specify even further limits to it.

Limits and Conclusion

Note the *antitrust* feature of our theory. We do not want the same group to have a monopoly of advantage over both symbolic and material power. This antipathy toward monopoly is the rock-bottom sentiment that grounds the importance we place on both symbolically-mediated historical oppression and the salience of material disadvantage at the time of group-recognition politicization, as well as the relationship between the compensatory policies implied by the ongoing application of a measure of material advantage to monitor the degree to which past symbolic oppression remains a good basis for demanding group recognition. Indeed, antipathy toward monopoly is the main reason why, on our view, it is perverse for a materially-advantaged national minority to claim further advantage on account of past symbolic oppression.

Ours is not, however, a general theory of non-domination, and we are not committed to resolving other questions of justice in terms of our antitrust intuition. Indeed, in this paper we make no claim as to the generalizability of our argument to group recognition claims made on behalf of kinds of groups other than national minorities. Such extensions of our theory and of the corresponding antitrust intuition that underpins it may very well work out. But nothing in our argument turns on whether this is the case.

Perhaps the most salient limit to our argument is that we take the national state for granted as the relevant context for making national minority arguments for prima facie standing. Sixty years ago, that might have still perhaps not been a substantial limitation. Today, however, international law and progressive political ideology both know better, and we need to explain the reason for this waffle. Our reasons are both practical and legal. As a practical matter, claims for group recognition made in the name of national minorities are made against, and in the legislatures and courts of, one (or at most two or three) national states. And normally it is the behavior of the agencies of a specific national state that is the target of national minorities' demands.

Moreover, while at the super-national and international level, there are courts and legislatures concerned with matters of international law generally, and with issues having to do with national minorities' claims to group recognition in particular, it is national legislatures and national courts which do most of the policy-making having to do with international law. As a matter of fact, the relevant materials of international law having to do with national minorities explicitly empower national states' own agencies with a first go at and final enforcement duty of addressing claims made on behalf of national minorities. There is no doubt, however, that the national-state shades through which we have addressed the issues are a substantial limitation. For

upon reflection, it is as clear as sunlight that national states are social groups some of which have disproportionate share of power over symbolic recognition and material resources. But note that our antitrust theory of group recognition may very well be useful for formulating and adjudicating claims of international justice, in particular claims for international compensatory justice tied to war-making and imperialism.

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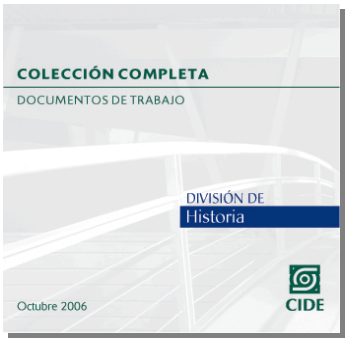

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