

## RETHINKING POLITICAL RECOGNITION

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The purpose of this paper is to discuss the reluctance of liberal philosophers and political scientists toward politics of recognition for minorities. This reluctance is especially strong with respect to the entrenchment of the collective rights of minority nations and “national minorities” (understood as extensions of neighboring national majorities) in a constitutional document. My strategy will first be to sketch the theoretical framework behind such ‘political recognition’ and then to discuss some of the objections that have been raised from a liberal perspective. As I understand it, politics of recognition must translate into constitutionally entrenched collective rights, and this can coherently be done within a liberal framework as long as the approach is inspired by political liberalism. So my hope is that by answering those objections, I can pave the way for a liberal theory of collective rights.

### Political Liberalism as a theoretical framework

I shall now describe the liberal framework that I wish to adopt. I subscribe to political liberalism, that is, the view according to which liberalism must avoid any commitment to comprehensive theses in metaphysics.<sup>1</sup> It is founded upon a political conception of the person as well as a political conception of peoples (nations) and it is neutral toward issues of personal identity, moral psychology or social ontology. Individuals have an institutional identity and are conceived as citizens no matter how they represent themselves from a metaphysical point of view (single or multiple identity, individualistic or communitarian, narrative or dialogic, dualistic or materialistic, religious or secular, etc.). Nations also have a certain institutional identity quite apart from representing themselves as ethnic, civic, cultural, sociopolitical or diasporic.

Political liberalism does not even imply a commitment to the view according to which persons are ‘prior to their ends’. We can be neutral in the debate between individualists who believe that persons are individuated as independent from any moral or religious beliefs and communitarians who reject that view. The crucial point is that our institutional identity must be understood as distinct from our metaphysical identity, and this entails among other things that we must distinguish between institutional and moral identities. Our moral identity may change while our institutional identity remains the same whether or not we can be considered under those circumstances as having also the same personal identity. Rawls reminds us that, on the way to Damascus, Saul of Tarsus became Paul the Apostle. Individualists say that he remained the same person but changed his moral beliefs. Communitarians say that Saul of Tarsus became another person. Without engaging into such a debate, Rawls suggests that

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<sup>1</sup> Rawls, 1993.

we can acknowledge that his institutional identity remained the same.<sup>2</sup> We can say that we are confronted to the same citizen, even if communitarians *may* perhaps be right in thinking that we are not dealing with the same person.

Similarly, peoples can also be described as having a certain institutional identity. We can thus introduce a political conception of peoples that parallels the one that we introduced for persons.<sup>3</sup> Using Will Kymlicka's terminology, we can describe them as 'societal cultures' involving common languages, common 'structures of cultures' and common histories.<sup>4</sup> These institutional features belong to all sorts of nations, whether their populations also conceive themselves as ethnic, civic, cultural, sociopolitical or diasporic.

Political liberalism also entails that individuals are not the ultimate sources of moral worth, for peoples too have an autonomous moral worth. I am favorable to an axiological pluralism in virtue of which the equal moral importance of individuals and peoples is asserted. This leads to the admission of two distinct original positions, one for individuals and one for peoples.<sup>5</sup> Ultimately, it also implies that we are seeking for an equilibrium between individual and collective rights. We reject both ethical individualism and ethical collectivism. Individual rights must not override collective rights and collective rights must not override individual rights. So we are not favorable to approaches that attempt to derive collective rights from arguments that ultimately rely only on claims made by individuals. We reject accounts that treat the subjects of collective rights as individuals or arguments purporting to show that collectivities only have instrumental value for individuals. We must make room for full blooded collective rights and not only for 'group differentiated rights'.<sup>6</sup> Collective rights are not claimed on behalf of individuals but on behalf of peoples. The subjects of these rights are not individuals, they are peoples, and their relevance is not to be explained by the value individuals ascribe to their own cultural affiliations. Peoples are valuable because they contribute to cultural diversity and because there is a growing consensus concerning the instrumental value of cultural diversity for the survival of the human species.

This argument does not presuppose ethical individualism or ethical collectivism. So I disagree with Kymlicka on the appropriate justification for collective rights. He is certainly right to claim that peoples understood as societal cultures provide necessary conditions for the implementation of liberal values. But Kymlicka is also aware that this is not sufficient to justify the promotion and protection of many different societal cultures, for the claim is compatible with the existence of a unique societal culture for all mankind. Nor is it sufficient to suggest that most citizens favor among other things the protection of their own cultural affiliations, for the population may also equally favor many other sorts of group affiliations and the state cannot provide assistance to all the groups. So Kymlicka must provide an argument that justifies the special character of *cultural* protection, and must thus find a justification for saying that societal cultures should be the primary targets of the politics of recognition (whether they are minority nations, national minorities, or immigrant groups).

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<sup>2</sup> Rawls 1993, 31.

<sup>3</sup> This is precisely what Rawls 1999 does.

<sup>4</sup> Kymlicka 1995, 76-79.

<sup>5</sup> See Rawls 1999, 33-34, for an account that allows us to treat peoples as self-authenticating sources of claims.

<sup>6</sup> Kymlicka, 1995.

In order to achieve this result, Kymlicka is forced to postulate in the minds of persons the existence of a rational preference toward *their own particular cultural affiliation*.<sup>7</sup> It is this additional premise that allows him to justify a certain cultural protection for many different minorities within the constraints of ethical individualism. The trouble is that it is simply not true to suggest that among all the possible group affiliations most people prefer their own cultural affiliation. Individuals rank their allegiances very differently and they even change their minds from time to time. Some don't care about their cultural affiliation. Others will rank it very low. The inevitable conclusion is that the individualistic justification for collective rights fails.

But the present approach does not postulate such a problematic rational preference because it does not try to justify collective rights solely by relying on individuals as sources of moral worth. Of course, I accept that as a matter of fact societal cultures are necessary conditions for the implementation of a system of rights and liberties. I also accept that the majority of citizens must be favorable to the protection of their own societal cultures, for if they were not, assimilation would no longer constitute a moral harm. But I disagree with the suggestion that there is a consensus among the population to the effect that cultural affiliation occupies center stage among all group affiliations. On the contrary, we have to acknowledge the wide variety of multiple identities within the population and acknowledge their dynamic character. So we have to seek for another argument, and my suggestion is that an anti-individualistic justification that relies on the instrumental value of cultural diversity for the survival of the human species provides exactly what we are looking for.

Let us consider for a moment this principle of the instrumental value of cultural diversity relative to the human species. It is not to be confused with a thesis regarding the intrinsic value of cultural diversity<sup>8</sup>, nor with a view asserting the instrumental value of cultural diversity for the individual.<sup>9</sup> The survival of the human species is seen as having an intrinsic moral worth in addition to the moral worth of individuals, and it is relative to the survival of the human species that we can acknowledge the value of cultural diversity. Just as a diversified economy can be a necessary condition for prosperity, the protection of cultural diversity is an insurance policy against the disappearance of the human species.<sup>10</sup>

On the basis of this first premise asserting the value of cultural diversity, we can develop an argument for political recognition. We accept that there are many different concepts of the nation (ethnic, civic, cultural, sociopolitical<sup>11</sup> and diasporic) that are irreducible to one another and we choose to acknowledge this irreducible diversity. This is our second premise. So let us accept such an irreducible conceptual pluralism regarding the nation. It entails a tolerant attitude toward the different ways of conceptualizing peoples.

We should add, as a third premise, that nationhood is at least in part a matter of self-representation and also note, as an empirical observation, that many different populations entertain

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<sup>7</sup> Kymlicka 1989, 166.

<sup>8</sup> For such an account, see Parekh 2000. For a critical assessment see Bauböck (2001)

<sup>9</sup> As far as I know, no one holds this particular view. For a critical assessment of the view, see Kymlicka, 1995 : 121-123.

<sup>10</sup> National diversity is perhaps intrinsically connected with cultural diversity, but cultural diversity is neither intrinsically nor ultimately valuable. My view is that it is rather instrumentally valuable for the survival of the species. So there could very well be a time when this will no longer be so. On the distinction between intrinsic and ultimate value, see Raz 1986 177-178.

<sup>11</sup> Seymour 2000.

different self-representations involving these different concepts of the nation. Indeed, many communities are engaged into a nation-building process in which they articulate their national consciousness in accordance with different national self-representations involving different concepts.

Finally, we must also admit that these different self-representations contribute to cultural diversity. This is certainly the case when the self-representations are articulated with a different concept, for the self-representations suppose different ways of understanding human communities. Aboriginal peoples often see themselves as ethnic nations. Other populations insist on the importance of language, culture and history. Some populations will hail the virtues of civic identity. There will also be national groupings that will try to steer a course between civic and cultural identities by putting forward a sociopolitical model. Finally, some diasporic nations will also emerge and try to survive in spite of their diasporic nature. Accepting these different self-representations is one of the best ways that we have to make sure that human diversity is preserved. But even when two communities are the same sort of nations, there are important differences that serve the purpose of cultural diversity.

If we agree with all those claims, then we must realize that together they provide a philosophical justification for the adoption of a policy of recognition toward peoples. In other words, it is claimed that we must first adopt an attitude of tolerance toward different concepts of the nation, since this pluralism has led to a formidable diversity in the self-representations of peoples. And it is claimed that we must grant a political recognition in the public sphere to these different national identities, since they serve the purpose of cultural diversity and cultural diversity is instrumental for the survival of the human species.

I said that the kind of liberalism I favor is political liberalism. In this regard, it is important to point out that political liberalism is not ultimately founded upon the value of individual autonomy but rather upon the value of tolerance. But this idea of tolerance should not be understood as implying that liberals must tolerate anti-liberal political regimes. Tolerance applies first and foremost to different conceptions of persons and peoples. In other words, it stems from the acknowledgment of an irreducible diversity of metaphysical views concerning the person and the people. For this reason, it can bring about in the public realm a mutual recognition between citizens and between societal cultures, that can lead to a consensus concerning the political conception of the person and the political conception of the people. Tolerance also inevitably applies to the irreducible variety of moral ideals held by these different individuals and peoples, which can then bring about political liberalism. But it need *not* imply that political liberalism itself should be relativized and that we should be tolerant toward anti-liberal regimes. For once we agree on the political conceptions of the person and of the people and agree on the irreducibility of reasonable views about the good life or about common good, we can then proceed to derive political liberalism. And since the conceptions of persons and peoples are universal in character, we must also agree that political liberalism is itself a universal doctrine. Consequently, there is no reason to conclude that tolerance involves a commitment to a certain form of political relativism.

Now, it is true that Rawls argued both for political liberalism and for tolerance toward hierarchical (anti-liberal) societies, but there is no logical connection between these two views. Let me emphasize that point since people generally reject political liberalism precisely on the grounds that it leads to relativism.<sup>12</sup> Rawls was led to embrace such a view of toleration toward non-liberal regimes because he also held the view that the normative principles and the conception of the person on which political liberalism is based are the result of an historical consensus that has been achieved within our

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<sup>12</sup> See for instance Kok Chor Tan 2000.

own political culture. Rawls thus interprets political liberalism as a particular historical achievement within democratic societies. When we understand it that way, we inevitably see it through the lens of a relativistic approach. But one can reject this communitarian turn that took place simultaneously with the Rawlsian defense of political liberalism. The consensus reached concerning the political conception of the person need not be founded solely upon tradition, since it can be reenacted through deliberation and discussion.

Moreover, one must acknowledge the existence of a global basic structure and reject Rawls' idea that there are only local basic structures. Rawls mistakenly believes only in the basic structures that exist within traditional nation-states and he seems to ignore completely the effects of globalization. *Pace* Rawls, there is indeed a global basic structure that perhaps does not entirely replace the local ones but that still has an enormous influence over our lives. The cosmopolitan conception of the person can thus be introduced within an amended Rawlsian framework, as long as we accept the extension of the notion of basic structure at the global level. The cosmopolitan person is just the political person in a global basic structure. The veil of ignorance can therefore be applied to cosmopolitan persons in a second stage within the first original position.

We must finally leave behind Rawls' propensity to avoid complexity. We live in multiethnic societies and not within closed societies that we enter only by birth and leave only by death. So a consensus reached through deliberation between citizens of different origins at the local level could be seen as an indication that the same consensus can also be reached at the level of the global structure. Unfortunately, Rawls has chosen to work within simplified models only. This is perhaps initially a reasonable methodological choice, since it allows him to distinguish between justice within a people and justice between peoples, but working only with the simplified model of an ethnically uniform society can also lead one to downplay the cosmopolitan virtues of political liberalism. If political liberalism can be implemented anywhere, it must be within our own democratic societies. But these are increasingly polyethnic, pluricultural and multinational. So if it can be accepted by citizens of different origins within our societies, we cannot consistently proceed to argue after that that the consensus cannot be exported.

In short, I believe that one can remain faithful to political liberalism without having to become tolerant toward non-liberal regimes. In order to secure this position, we must make amendments to the initial doctrine of political liberalism. We can disentangle political liberalism from its own historical roots through discussion and deliberation. We can also widen the scope of application of the veil of ignorance to the global society by acknowledging that there is after all a global basic structure. And we can treat the consensus reached at the local level between individuals having different origins as an empirical indication that confirms the results that we have reached under the veil of ignorance at the global level. Political liberalism can then itself be seen as a realistic utopia even within the international arena if it can work in our multiethnic societies. So even if it is founded upon the value of tolerance between different metaphysical views of the person and of the people, and between different moral ends, it does not lead to tolerance toward non-liberal regimes.

It may seem surprising to use Rawls' political liberalism in an argument for political recognition, especially since we have also criticized Kymlicka. I agree that Rawls has had almost nothing to say concerning the problems of cultural protection for national minorities and minority nations, and I agree that Kymlicka has done a fantastic job in this regard. But I happen to disagree with Kymlicka's ethical individualism, for I believe that one cannot appropriately derive an adequate account of collective rights

if one adopts ethical individualism.<sup>13</sup> This is why I find Rawls's approach so appealing. Rawls defends a liberal approach that is not founded upon ethical individualism, nor upon any other comprehensive doctrine. He can thus work with a watered down political notion of peoples as well as a watered down political notion of person. It is for this reason that he can also acknowledge the autonomous moral value of peoples, and allow for a second original position involving peoples.

It is true that the 'peoples' discussed by Rawls in his *Law of peoples* are those that already have their own states. He almost never discusses in his essay the fate of stateless peoples. But this is not a theoretical failing. It is rather the result of a simplified methodology. Rawls has chosen to consider in first approximation only the simple case of peoples that already have their own states. Just as he considers for the sake of simplicity a first original position involving individuals belonging to a single homogeneous people, he assumes that the law of peoples must in first approximation deal only with an international order in which all peoples would have their own states. The eight principles that form the basis for a consensus reached in the second original position apply to peoples as organized into states. In both cases, domestic and international justice, these are extreme simplifications. But it is clear that Rawls' approach is perfectly compatible with developments that increasingly take into consideration the complexity of our own societies. Rawls explicitly claims that the eight principles should be complemented by rules for federations of peoples, and he crucially adds that there must also be rules concerning the self-determination and secession of peoples. He states that a 'people' should not in the course of secession subjugate the rights of another 'people'.<sup>14</sup> In these particular occurrences, the word 'people' does not apply to the owners of a state, for it refers to a population seeking to create its own nation-state or refers to minority nations that are part of a seceding people. Rawls also briefly discusses in a footnote the illegitimate character of the South during the American war of secession.<sup>15</sup> Whether or not the Southerners formed a people, secession would have been illegitimate because its segregationist character would have violated the fundamental obligation to protect basic human rights that is expressed in the law of peoples. Once again, the people involved in this argument is not the owner of a state.

Let me close these preliminary remarks by saying that the present approach is not meant to serve as an argument against nation-states. It is true that it is concerned with the viability of multination states, but this does not mean that I wish to endorse only this model of political organization. On the contrary, just as I am willing to tolerate different views of the person and of the people, and different moral views held by them, I also wish to recognize the existence of a wide variety of political models. These include nation-states, multination states (for example, multinational federations) and confederations of nation-states.

As it is now customarily suggested, nation-states are weakened from above, through globalization, and from below, through the pressures exerted by cultural minorities. But globalization and cultural minorities do not announce the end of nation-states as such. Globalization may indeed create a need to establish political supranational organizations, but these organizations should, among other things, be understood as a means to protect nations against the negative effects of globalization, and these nations include those that are organized into nation-states. There is also certainly a need to recognize cultural diversity within sovereign states, but that too must not entail the dissolution of the

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<sup>13</sup> See Seymour (forthcoming).

<sup>14</sup> Rawls 1999, 38.

<sup>15</sup> Rawls 1999, 38, note 45.

nation-state. At best, it affords reasons for developing among other things a *de jure* pluricultural conception of the nation-state, based on a pluricultural view of the nation.

Indeed, there should not necessarily be a tension between nation-states and cultural pluralism. Those who think that there is very often presuppose an outdated conception of the nation. They wrongly believe that nations must be ethnically or culturally homogeneous. But this need not be so. There is no oxymoron involved in the idea of a pluricultural nation, one that allows for an explicit recognition of minority cultures (national minorities and immigrant minorities). And so there is no contradiction between nation-states and politics of recognition of minority cultures within the state.

We should therefore adopt a pluralist approach and realize that some peoples could develop into nation-states, while others could engage into federations or confederations with other peoples. Some will want to form federations with other peoples, and some others, like those within the European Union for instance, will find that the most appropriate model is a hybrid mixture involving federative and confederative features. So in a sense, even if the traditional ethnically and culturally homogeneous nation-state is outdated, we cannot say that the nation-state model as such is outdated. It is just that it can no longer be the only political model available and that where it survives it has to go through important transformations, for it must involve a political recognition of cultural minorities. The nation-state is surely not the only political model, but it should not be ruled out and replaced by a single alternative political model for, to repeat, *cultural* pluralism calls for *political* pluralism, and political pluralism requires the recognition of a wide variety of political models such as the nation-state model itself. So, far from entailing the dissolution of the nation-state, cultural diversity more subtly calls for a pluralist approach at the political level, which in turn may lead us to accept in certain cases the creation of new nation-states.

Furthermore, if we truly are cultural pluralists, we should be willing to fight for a political recognition of cultural diversity. And it should be admitted that when a state contains many different national groups, we should make sure that this cultural pluralism is reflected in the constitution, in the institutions and in the many different administrative arrangements within the multination society. But if it refuses to recognize its minority nations, then they will have a moral argument for secession and thus a moral argument to create a new nation-state. So one cannot simply announce the end of nation-states just by invoking cultural pluralism, globalization or multiple identities. For a failure to defend cultural pluralism by the encompassing state could lead us, on the contrary, to a different form of political recognition of cultural diversity, i.e. the creation of new sovereign states.

This is in rough outline what I take to be the general theoretical framework behind the politics of recognition. It provides the philosophical background for politics of recognition in a multination state. It is an argument based on justice and not on stability for the multination state, although it might be argued that serving the cause of justice may be the best way to ensure in the long run the stability of the state. Of course, arguments based on stability may also be invoked for politics of recognition. It can be argued that in order to ensure the viability of multination states, we should implement politics of recognition of the component nations belonging to those states. The rationale behind this is that one cannot expect a nation to be willing to accept a devolution of its sovereignty to an encompassing state while failing to be recognized as a nation within that state. So I wish to claim that those who argue for multination states and against politics of recognition defend an unstable position. In order to avoid such a problem, one must make room for the entrenchment of collective rights of peoples in the constitution of multination

states. But I shall not develop this particular argument any further. I now want instead to turn to objections that have been raised against political recognition.

### **Reification ?**

Some of the objections raised against the political recognition of peoples have to do with the ontology of collectivities. It is claimed that the defender of collective rights for peoples must postulate a dubious collective entity, a macro-subject that is problematic from an ontological point of view. But this objection can easily be countered if the general framework adopted is political liberalism. I have argued that political liberalism is founded upon a political conception of the person and of the people.<sup>16</sup> By the ‘political conception of the person’, Rawls understands a consensual and publicly available self-representation of individuals, who see themselves in the political realm as “moral persons”, that is, as having among other things a certain rational autonomy as far as their institutional identity is concerned. This consensual self-representation has gained its credentials within our modern political culture. It is well suited to account for the concept of citizen, that is, for our ‘institutional identity’. It does not involve factual claims concerning our moral psychology.<sup>17</sup>

If liberalism is supported by a political conception of the person, this creates favorable conditions for similarly introducing a political conception of peoples, who see themselves as constituting full societal cultures. Nations are, at least in part, ‘imagined communities’<sup>18</sup> and we do not need to postulate their existence out there in the real world as independent metaphysical entities. From a strict metaphysical point of view, there could be good reasons to believe that there are important ontological problems in admitting the existence of peoples. But the situation is quite different if we rely just on a political conception. In this case, we make use of a consensual self-representation that does not have any metaphysical import and that applies only in the political realm. Indeed, many social groups may represent themselves as peoples (or nations) in a way that parallels the self-representation of individuals as moral persons. And so there seems to be, at the level of self-representation, no reason to oppose the introduction of a political conception of peoples, in addition to the political conception of persons, as the subjects of rights. For that reason, the ontological qualms expressed by many concerning the social ontology behind a theory of collective rights are now simply out place. We do not need to reify groups in order to allow them for public recognition in a constitution.

### **Essentialism ?**

Contrary to what some have often suggested, a political recognition of deep cultural diversity does not presuppose an essentialism concerning the nation. The reason is that, according to the present account, nations do not exist apart from the self-representations of the individuals. They are at least partly subjective and they can thus change through time because the self-representations of whole populations can also change through time. This view of the nation allows us to see it in constant transformation, even if these changes take place very slowly. We are therefore not committed to the view that they have a permanent essence, or a stable ontological status. I reject ‘primordialism’ or

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<sup>16</sup> For the political conception of persons, see Rawls, 1993, 29-35; for the political conception of peoples, see Rawls 1999, See especially 23, 34.

<sup>17</sup> Rawls 1985, 245.

<sup>18</sup> Anderson 1991.



‘perennialism’ as it is sometimes applied to nations<sup>19</sup>. There used to be a time when nations did not exist, and there will be a time when they will no longer exist. We are thus not presupposing an essentialist definition of the nation in terms of necessary and sufficient conditions. There are many acceptable definitions of this concept, and these must be understood as ‘stereotypes’, in Hilary Putnam’s sense of the word.<sup>20</sup>

The problem however is that many philosophers believe that in order to avoid essentialism, we must accept a radical metaphysical thesis according to which ‘existence precedes essence’. Since persons do not have a nature, they are what they do and must therefore be understood as the result of their own actions. If we accept this approach and accept the view that self-representations are also constitutively related to nations, then identity can be equated with narrative identity. The identity of a person will be the result of the relevant actions that have shaped her life, in accordance with the way in which she chooses to tell the story of her life. The choice of the relevant actions thus depends on the narrative construal that she decides to adopt. Now, narrative identity is such that it may lead the person into a constant reappraisal of her own projects, goals and moral ends, which means that one’s identity constantly changes. Accepting narrative identity is accepting a radical metaphysical dynamical account of personal identity. It is according to many philosophers the only way to avoid essentialism.<sup>21</sup>

Now, this is bad news for any constitutional political recognition, since constitutions are meant for long term policies and require the postulation of fixed identities. The problem is that group affiliations are subject to important changes and vary in accordance with one’s narrative construal. So constitutions can perhaps contain references to basic human rights but not to group rights as such. Once again, the reason is that narrative identity implies multiple and variable group identities. So we should not wonder why people do not address identity issues in the courts. It is because everyone accepts that, in these matters, differences are important between individuals and that one’s identity may also vary through time. In other words, everyone understands that we have entered a realm where it is impossible to work with established, fixed identities. So the constitutions that avoid postulating groups are in a way quite faithful to this radical variability of personal identity.<sup>22</sup>

What can be replied here? My first response is that since the argument rests on the metaphysical thesis of narrative identity, then it does not do justice to the fact of pluralism. As I pointed out already, there are many different ways of conceptualizing persons as well as peoples and applying the principle of tolerance forces us to acknowledge the irreducible disagreement that we have on these issues. The minimal consensus that can be achieved only involves institutional identities (of the person and of the nation). We can all recognize each others as citizens having different metaphysical views about ourselves. Some believe in fixed essences while others believe in narrative identity. These disagreements are instances of a reasonable pluralism. So it is foolish to try to build a political consensus in a pluralist society by relying on particular controversial claims in metaphysics.

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<sup>19</sup> Geertz 1963.

<sup>20</sup> Putnam 1975, 249-251.

<sup>21</sup> Taylor 1985 and 1989, 47, 50-52; and Ricoeur 1990.

<sup>22</sup> Taylor is of course both a defender of narrative identity and of politics of recognition and the argument may sound problematic for that reason. But it should be reminded that Taylor avoids any talk about collective rights in Taylor 1994. Political recognition must be granted concerning the ‘collective goals’ of minority nations and national minorities, not their collective rights. So he is not clearly favorable to politics of recognition that formally take the form of the entrenchment of collective rights for peoples.

I also fail to understand why an argument concerning the radical variability of views on matters of identity should lead us to believe that individuals but not groups can be the object of provisions in a constitution. In political philosophy, we must resist reifying all entities, individuals as well as peoples. There is as much variability on issues of personal identity as there is on issues concerning group affiliations. If we accept to entrench provisions concerning individuals in spite of the deep gulf that separate us on metaphysical issues, why couldn't we do the same for groups? Since individuals have been recognized as citizens in the constitution, why can't we allow for peoples for a similar recognition to 'societal cultures'? I said that there used to be a time when nations did not exist and that there could be a time when they would no longer exist. But this remark also applies to individuals. There used to be a time when there were no individuals and there will unfortunately be a time when there are no longer individual human beings in this world. But that is not a reason for denying them rights. Similarly, I want to suggest that we should not refuse rights to peoples on the basis of their contingent, historical character.

If we entrench the collective rights of peoples in the constitution, there will most probably be many national groups that will finally raise their voice and that will seize the courts for past grievances and injustices, just like many individuals seized the supreme court of Canada when Canadians decided to entrench a charter of rights and liberties. So the *status quo* does not reflect an absence of consensus on the need for political recognition. Indeed, it is completely wrong in my view to suggest that the silence of populations on 'identity' issues in the courts explains the silence of the constitution. It is on the contrary the silence of the constitution that explains why the population is itself silent.

Nations are subjective. We must however distinguish between two different senses of the word 'subjective'. It is one thing to argue that nations do not exist apart from our self-representations, along with a minimal loyalty and the collective will to live together, and quite another to suggest that our narrative identity is also relevant. I agree that there is a very deep diversity of views concerning the nature of our national affiliations. But even those who disagree on these issues can see themselves as part of the same nation, and have minimal loyalty and a will to live together. So a minimal consensus can be reached regarding our institutional national affiliations as long as only some subjective features are treated as relevant, for it is only then that the account becomes compatible with different ontological views.

### **Communitarianism?**

I now want to remove an even more important prejudice that liberal philosophers entertain toward political recognition. It must be emphasized that the recognition of a deep diversity does not necessarily lead to communitarianism, i.e. the view according to which the state must promote a particular conception about the good life or about the common good. But this is how many liberals interpret political recognition. It is claimed that the promotion and protection of a particular group amounts to the promotion and protection of particular interests. The problem becomes salient especially for those who believe that essentialism can only be avoided by endorsing a narrative account of identity, for it then becomes impossible to separate identity from the goals, projects and moral ends that we entertain. Our national identity will itself be intermingled with plans, goals, projects and moral ends. It is very often with such a view of narrative identity that communitarians are led to think that the state must promote a particular moral view. According to the communitarians, individuals and communities are individuated by specific sets of values, goals and projects. Members of the same community entertain similar views about the common good or about the good life. Promoting and protecting the

individuals and their national communities must go hand in hand with promoting and protecting the particular moral views that are held by them.

But the present account avoids the pitfalls of communitarianism. Nations may be understood only as ‘societal cultures’ involving (i) a common public language (or many official common languages), (ii) a common public culture understood as a ‘structure of culture’ (i.e. common institutions offering a ‘context of choice’), compatible with the existence and recognition of local public minority cultures, and (iii) a common public history, compatible with the existence and recognition of different local minority histories. The concepts of ‘societal culture’, ‘structure of culture’ and ‘context of choice’ are all borrowed from Will Kymlicka<sup>23</sup>.

A recognition of the collective rights of nations within the multination state need not involve a partial commitment in favor of specific sets of values, if peoples (or nations) are construed as political societies involving only common public languages, common public cultures and common public histories. The notion of a common public culture, in particular, refers only to a common set of institutions (political, social, ‘cultural’ and economic institutions). It refers to a ‘structure of culture’ and not to a ‘character of culture’. Individuals are individuated partly in terms of specific institutional affiliations. They have a specific national identity, but the latter must not be confused with a particular moral identity. Rawls’ distinction between our institutional identity and our moral identity can thus be applied at the collective level. Rawls suggested that our moral identity could change even if our institutional identity remains the same. The same kind of remarks can be made regarding the structure of culture. The structure of culture may remain the same even if the character of culture changes.<sup>24</sup> This is why I said that Rawls’ distinction between institutional identity and moral identity at the individual level parallels Kymlicka’s distinction between the structure of culture and the character of culture at the collective level.

These three ‘goods’ (common language, culture and history) are not ‘particular’ goods, for they are basic ingredients in the concept of a common civic identity that, in turn, is required in any society. So promoting these goods is not the same as promoting particularism, for the features in question are universal traits belonging to any societies. Individuals can be multilingual, have multiple cultural affiliations and can even be members of nations within nations, and thus entertain multiple national identities. But this pluralism must not remain a *de facto* pluralism. It must become also *de jure* pluralism. And we can do it without falling prey to communitarianism.

### Collectivism?

Politics of recognition have nothing to do with collectivism, i.e. the view that the collective rights of peoples have an absolute priority over the fundamental liberties of individuals. One can, and indeed, one must, allow for an equilibrium between individual and collective rights. Both sorts of rights are fundamental and cannot be violated. One can be both anti-individualist and an anti-collectivist liberal, just like Rawls.

The debate has been confused partly because we fail to distinguish between two very distinct sorts of questions: those that concern the debate between liberalism and communitarianism, which

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<sup>23</sup> Kymlicka 1989, 1995.

<sup>24</sup> kymlicka 1995, 77.

ultimately rests on whether moral principles, values, goals are constitutive of one's identity, and those that concern the debate between individualism and collectivism, which determine the priority to be afforded to individual rights as opposed to collective rights. It is possible to reject communitarianism in favor of liberalism without embracing individualism, since we are willing to grant collective rights on a par with the fundamental individual rights and liberties.

We subscribe to the fundamental claims of liberals, for we assert

- (i) that individuals and communities are not institutionally individuated by reference to their moral identities;
- (ii) that individual rights are fundamental and cannot be subordinated to any other rights;
- (iii) that there is a priority of justice over common good;
- (iv) and that the state must be impartial and must practice a benign justificational neutrality toward any particular view of the common good.

But we are not individualists because contrary to so many liberals, we do not assert the absolute priority of individual rights over collective rights. As societal cultures with a common civic identity, peoples or nations may also have fundamental rights in a liberal society. I would thus reject the ethical individualism that now prevails in the literature and that affects even the work of Kymlicka. Actually, Kymlicka does not really wish to defend collective rights as such. He prefers to talk about "group differentiated rights" and the distinction between the two sorts of rights is more than just a terminological matter. For Kymlicka, the essential idea in the notion of 'group differentiated right' is the object of the right and not the subject. It is the collective good and not the collective subject of the good. So for him, individuals can be the subject of such rights. Moreover, allowing for group differentiated rights apparently answers to a fundamental individual requirement. Societal cultures are primary goods and individuals assign the status of a primary good to their own societal culture. Their national affiliation is of fundamental value to them. So for Kymlicka, these collective goods are goods for the individual. By protecting and promoting these so called primary goods, we are protecting and promoting individuals, for we are protecting and promoting something that is of crucial importance for them.

There are of course many philosophers who believe that Kymlicka has successfully shown that ethical individualism is compatible with a regime of collective rights. But Kymlicka's argument has been attacked by numerous liberal philosophers. Unfortunately, I'm afraid that Kymlicka's attempt fails for the reasons that were previously mentioned. Individuals do not necessarily give absolute priority to their national affiliations. They have different allegiances, and some of them are more important than others. For many citizens, national ties are less important than those they entertain toward their family, fellow workers, sexual allegiance, neighborhood, city or region. The fundamental principle of equal respect must be applied in those instances, for different individuals may chart their allegiances differently and each individual may change her preferred ties from time to time. So it is simply not true to claim that individuals give the status of a primary good to their own national affiliations. Buchanan has used this argument in order to conclude against Kymlicka that nations are not special among all cultural groups<sup>25</sup>. Pogge has used a similar argument in order to conclude that many cultural groups and not necessarily ethnic groups could claim for political recognition.<sup>26</sup> Weinstock has shown that since the argument could lead us into a proliferation of group rights, it could serve as a *reductio ad absurdum*

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<sup>25</sup> Buchanan 1996.

<sup>26</sup> Pogge 1997

against most arguments in favor of such rights.<sup>27</sup> He argues that affording collective rights would lead to an irremediable proliferation of groups seeking for the same kind of recognition, and this presumably shows that it would be a mistake to engage into such recognition.

Answering these objections completely would require a theory that imposes enough constraints on the subject of the right and that would justify the inclusion of certain groups and the exclusion of the others. I shall leave this task for another occasion. For present purposes, it will be enough to note that these arguments work only if we assume ethical individualism. The idea is that according to ethical individualism, cultural protection can be justified only if it is claimed on behalf of individuals. It must in another words be based on their rational preferences. Kymlicka's opponents are quite happy to share this premise with him. But it is then noted that individuals have a wide variety of cultural allegiances and that national allegiance does not occupy a central position for all of them. All sorts of groups can count as well among their favored allegiances. So if political recognition is to be granted to groups, it must be granted to all the groups that are important for individuals. This shows that political recognition is problematic because we cannot expect a constitutional document to recognize all the groups.

The arguments of Buchanan, Pogge and Weinstock do not affect the present approach because we do not subscribe to ethical individualism. There are literally hundreds of liberal philosophers who solemnly declare that ethical individualism is an essential constitutive doctrine of liberalism. Ethical individualism is (i) a comprehensive doctrine according to which (ii) individuals are prior to their ends (iii) are the ultimate source of legitimate moral claims, and according to which (iv) individual autonomy is the most fundamental liberal value. On that basis, some reject altogether the idea of collective rights (Barry<sup>28</sup>, Habermas<sup>29</sup>, Hartney<sup>30</sup>, Narveson<sup>31</sup>, Tamir<sup>32</sup>). Others distinguish between acceptable and unacceptable sorts of collective rights (for example, Kymlicka's distinction between external protections and internal restrictions)<sup>33</sup>. Some argue that collective rights are acceptable only if they are individuated by their object and only if the ultimate subject of the right is the individual. (Green and Réaume)<sup>34</sup> Others assert that collective rights are not special to ethnic groups. (Buchanan, Pogge, Weinstock) In all those cases, philosophers tend to ignore in different ways the importance of recognizing collective rights for what they are. The picture is distorted because ethical individualism is simply assumed without argument.

For Kymlicka, group differentiated rights are required for the protection of individual attachments or preferences toward particular groups. He thinks that the only good justification for collective rights is one that postulates not only that there are primary collective cultural goods for the individual, but also that individuals rationally prefer their own societal culture. But we have to acknowledge the fundamental plurality of our emotional ties, cultural attachments and national sentiments. We also have to acknowledge an irreducible variety in our preferential ranking of these various allegiances. But does it mean that one cannot provide a justification for the implementation of a

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<sup>27</sup> Weinstock 1999.

<sup>28</sup> Barry 2001.

<sup>29</sup> Habermas 1994.

<sup>30</sup> Hartney 1991.

<sup>31</sup> Narveson 1991.

<sup>32</sup> Tamir 1999.

<sup>33</sup> Kymlicka 1994, 1995, chapter 3.

<sup>34</sup> Green 1991 and Réaume 1988.

regime of collective rights? Not really. What it shows, essentially, is that such a foundation cannot rest upon ethical individualism.

So how can we justify the special status of peoples? Kymlicka is quite right to claim that the protection of societal cultures is not only compatible with individual liberties, but that it is as a matter of fact a condition of possibility for the exercise of individual liberties, for societal cultures provide a context of choice that enable us to exercise them. So the protection of societal cultures is on a par with liberal ideals. We could even add that societal cultures are necessary conditions for the occurrence of a chart of different allegiances in the minds of individual citizens. There could not be different rankings from individuals to individuals and from time to time if there were no societal cultures in the first place. Third, far from creating problems for political recognition, the existence of multiple identities provides on the contrary evidence that, in some sense distinct from Kymlicka, nations are special for individuals. Indeed, plural identities reinforce the idea that we belong to the nation. It is because we can be part of many groups and rank them in the order that we choose that national identity can reveal its importance. For if we had to choose only one group affiliation, many would prefer some other group. But if we are allowed to choose many, it will appear that national affiliation, no matter how ranked, is part of everyone's chart, while sexual allegiance or the allegiance to a trade union or to one's professional group appear only in some charts and not in others. For instance, many heterosexuals won't even mention their heterosexual allegiance; many Montrealers won't even think of mentioning their Montreal affiliation, and many Canadian philosophers won't even think of mentioning their affiliation to the Canadian Philosophical Association. But the vast majority of Canadians (or of Quebecers) will sooner or later mention that they are Canadians (or Quebecers).

Of course, the above remarks are not meant to suggest that politics of recognition can be justified by new arguments in moral psychology. It only serves to prove that national affiliation is somehow special. To repeat, the justification for cultural protection is that the existence of different societal cultures is an instance of cultural diversity and cultural diversity is instrumental for the survival of the human species.<sup>35</sup>

We tend to forget that there are different versions of liberalism. While some versions are founded on ethical individualism, others are founded on toleration. There is almost a conspiracy to criticize this alternative form of liberalism, but as I have argued, it is a preferable theoretical framework for the politics of recognition. I have shown that Rawls for instance defends such an account. Even if he is still unfortunately under the spell of the traditional nation-state model, and even if he has done very little (especially when compared to Kymlicka) on the subject of deep national diversity, there is much to be said in favor of an approach inspired by his political liberalism for politics of recognition. His brand of liberalism is not based on a comprehensive doctrine such as ethical individualism. So for Rawls, the collective rights of peoples are not derivatively introduced on the basis of considerations pertaining to individuals. They do not merely have an instrumental value for individuals. Collective rights are not justified by the rational preferences of individuals, because peoples 'as such' have a right to self-determination (although they may have only a remedial right to secede, as suggested by Buchanan). I

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<sup>35</sup> I do not accept Kymlicka's arguments against using the value of cultural diversity in order to justify implementing collective rights. Kymlicka's criticisms can only work because he presupposes that the value of cultural diversity can only be instrumental to the individual. But it can be an instrumental value relative to the species, and not to the individual.

believe that a liberal theory that can welcome collective rights in this way really puts us on the right track.

This is what is explicitly taking place in *The Law of Peoples*. Many commentators have been very critical of the book. (See for instance Beitz, Buchanan, Kuper, Pogge and Tan <sup>36</sup>) They are right to criticize its important limitations for international justice and, in particular, they are right to denounce Rawls's failure to appreciate the existence of a global basic structure, Rawls's abandonment of fundamental liberal principles in the realm of international relations, and his tolerant attitude toward non-liberal regimes. But they also fail to appreciate the virtues of the book, and the reason is that they read him through the lens of ethical individualism.

### **Authoritarianism?**

There is however another objection that can be leveled against the claims that I have been making. When one tries to show the importance of peoples in political philosophy, we must treat them as subjects having emotions and pro attitudes. There must in particular be a reference to the general will of the people as something that is supposedly different from a mere collection of individual volitions. But if there is such a distinction to be made, the main problem is then to determine who is able to interpret the general will of the people, and who is able to speak on its behalf. If the international community of peoples is to engage itself into an international social contract, who is going to speak on behalf of each people?

There is thus another argument to be made against the present approach. If we are minimally concerned to 'let the people decide', and if we are prepared to accept a minimal democratic constraint, the law of peoples will have to be approved by their populations. So it appears that the will of the people is nothing over and above the will of the population. Consequently, 'the people' must ultimately be reducible to a collection of individual citizens, and the populations involved into complete societal cultures must themselves be construed as associations of individual citizens. To put it differently, talking about collective rights and about the irreducibility of peoples as collective bodies is problematic and enters into a tension with the democratic principle. So from a democratic point of view, collective entities should not be understood as distinct from republics of individual citizens.

Once again, individualism wins the day but, this time, it is not through an argument that concerns the ultimate *justification* for group protection. It is rather because of a problem about the ultimate *legitimation* of group protection. So called 'collective rights' could only be accepted if, as a general principle, they were the result of a consensus occurring between concerned individual citizens. There is no legitimacy to the idea of the general will of the people if it cannot somehow be reducible to the individual volitions of all its ordinary citizens. For Habermas, for instance, civic (negative) liberties and political (positive liberties) share the same origin.<sup>37</sup> They must all originate from the deliberations of the individual citizens. If we want to accept any principles, it could only be because these principles have legitimately been established through a consensus occurring in a republic of fully participating citizens. But this shows that the will of the people is nothing over and above the collection of willing individual citizens. Once again, individuals must have an absolute priority. This time it is not because they are the

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<sup>36</sup> Beitz 2000, Buchanan 2000, Kuper 2000, Pogge 1994, 2001 and Tan 2000.

<sup>37</sup> Habermas 1995.

ultimate source of valid moral claims, but rather because they are the ultimate source of the legitimation of valid moral claims.

However, this argument can be sustained only if groups must be understood as purely objective entities existing independently of the self-representations of individuals. The objector is implicitly assuming that we have a choice between seeing the group as an *objectively* irreducible social entity and seeing the group as a collection of citizens. But social groups need not be construed as purely objective entities, and thus need not be understood in opposition with a republic of individual citizens.

We can accept that, as a matter of principle, the general will of the people does not exist independently from the interpretation made by its individual citizens. But we do so without reducing it to a collection of individual wills. Since the group exists only if each of its members has an appropriate self-representation, accepting that it does not exist independently from the will of each citizen does not cause the dissolution of the group. The fact that each member has a say on what is to count as the will of the people does not mean that there is no such thing as a social entity called 'the people', for there is a big difference between trying to express one's own will, and trying to interpret the general will of the people. Each individual citizen may have a say on what is to count as 'the will of the people', but it does not mean that the general will of the people amounts to nothing more than a mere collection of individual volitions. Even if the will of the people does not exist apart from the self-representations of all the citizens, the opinion of each citizen is an opinion concerning what is good for the group as a whole, and thus concerns what the group desires as a group, and that is very different from having to decide what is good for one self.

So we can accept a general democratic constraint on the general will of the people without having to reduce the people to a collection of individual citizens. In order to meet a truly democratic challenge and legitimize the collective rights of peoples, one needs to understand peoples as being at least in part as "imagined communities". They do not exist apart from the self-representations of citizens. Of course, this must not be interpreted as a claim in social ontology, for the version that we accept is the political conception of the people. Such a conception is also one according to which peoples do not exist apart from the self-representation of the population, but as we saw it must not be confused with an ontological claim. In any case, the citizens belonging to those imagined communities can have their own interpretation of what they see in their minds as 'the will of their own community'.

The will of the people is the result from the democratic decision of the population. It is the result of a shared interpretation by the majority of individual citizens concerning what each one sees as 'the will of the people'. If a majority of citizens votes in favor of a particular policy for the people, we can conclude that this is the will of the people. In other words, we accept the majority rule as the correct interpretation for the democratic principle. This rule is acceptable as long as everyone has an equal right to participate in the decision, and as long as the minority is allowed to continue defending its own alternative option and to try convincing the majority about this alternative option. It is acceptable also only if the decision of the majority does not go against fundamental individual rights and fundamental minority rights. Furthermore, members of the minority must not be forced to remain within the political community. In other words, if the majority makes a decision that minorities believe runs against their interests, they are entitled to leave.

In general, the majority rule is acceptable only if we are able to prevent the tyranny of the majority by a counterbalanced political recognition for minorities. This, by the way, answers indirectly



another objection very often leveled against politics of recognition for minority nations and national minorities. It is often wondered : what are the virtues of such policies if the adopted measures lead to an important number of restrictions on internal minorities? The answer, of course, is that we must implement also a policy of recognition for those internal minorities themselves.<sup>38</sup>

Finally, I would also add that when crucial issues like secession are involved, the majority rule is acceptable only if it is a win-win situation for the minority as well as for the majority. The only interpretation of the democratic principle remains in this case the majority rule, and so if a majority chooses to secede, then secession becomes acceptable. But those who wish to remain within the encompassing state must also win in some sense. When a seceding entity contains minorities that have important emotional ties with the citizens of the encompassing state, there must be partnership relations between the two states. One can think of a confederation of nation-states, for instance. So it is not necessary in the case of secession to modify our interpretation of the democratic principle by introducing new rules of qualified majority. The majority rule can be maintained, but we can creatively imagine other solutions to make sure that it is a win-win situation both for majorities and minorities.

My view is that there are individual and collective interests. Citizens can participate to the deliberations concerning those two different sorts of interests, but they do it in two different ways. They either consider individual arguments of rational acceptance (why is it good for the individual?) when their individual interests are involved, and they consider collective arguments of rational acceptance (why is it good for the people?) when collective interests are involved. The ultimate criterion of individual rational acceptance is based on the principle of individual consent, but the ultimate criterion of collective rational acceptance is the democratic principle, interpreted as the majority rule.

## Conclusion

Many philosophers question the moral priority afforded to the nation-state, but most of them still fail to promote politics of recognition. A large amount of literature has been published in the last ten years concerning the end of nation-states and concerning the virtues of constitutional patriotism, postnational identity, federalism, multicultural citizenship, cosmopolitanism, etc. Many have been engaged into a critical assessment of nation-building policies, but only few have considered politics of recognition. But it should be realized that the appropriate model of political organization is perhaps not the important point. Whether we are dealing with nation-states, multinational states or supranational organizations, all these political arrangements must incorporate politics of recognition. In addition to a full protection of human rights, we must implement the politics of recognition at all levels. Single nation-states must recognize the existence of national minorities (extensions of neighboring nations) and immigrant communities, multinational states must recognize the existence of minority nations and of national minorities, and supranational organizations must recognize nation-states, multinational states as well as the minority nations and national minorities that compose them.

A political recognition of 'deep diversity' is indeed compatible with liberalism, as long as liberalism is conceived as political liberalism. Individual rights and liberties are fundamental and cannot be overruled by any other principles, but it does not mean that all other principles must be subordinated to individual rights and liberties, for there are also collective rights which are also fundamental and

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Green 1994.

cannot be overruled by any other principles. We must endorse a fundamental pluralistic axiology, and must try to reach a balance between individual and collective rights.

I would thus be inclined to say, along with Charles Taylor, that there are two sorts of liberalism : liberalism 1, which asserts the absolute priority of individual rights over collective rights and of the individual over society; and liberalism 2 which gives room to what Taylor calls 'collective goals' as well as individual liberties. Taylor uses the phrase 'collective goals' and not 'collective rights' because of his penchant for communitarianism. As a good communitarian, he rejects the priority of justice over common good and rejects for the same reason the priority of rights over moral obligations. So he does not like to talk about rights. His idea of political recognition is strictly political and has only a minimal effect on constitutional arrangements. But if we remove this communitarian orientation that we find at the heart of Taylor's approach, we could reformulate liberalism 2 as asserting an equilibrium between individual and collective rights.

I tried to argue that one could provide room for the collective rights of peoples without committing oneself to reification, essentialism, communitarianism, collectivism or authoritarianism, and I said that we could achieve this as long as we reject ethical individualism. It is true that most liberals do subscribe to ethical individualism, but not all of them do. I have shown that Rawls, for instance, argues for a law of peoples in which the fundamental rights of peoples are asserted alongside with the fundamental rights and liberties of individuals. The main task of this paper has been to show that this is the correct approach.

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