

# COLLECTIVE RIGHTS IN MULTINATION STATES: FROM ETHICAL INDIVIDUALISM TO THE LAW OF PEOPLES

by

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## **Introduction**

In this paper, I wish to discuss foundational issues concerning collective rights in the context of multination states. I shall assume throughout that in order to ensure the viability of multination states, we must implement politics of recognition for the component nations belonging to those states. I shall also take for granted the idea that politics of recognition should, among other things, include the entrenchment of the collective rights of nations (or peoples) in the constitution of the encompassing state. I shall also assume that the appropriate foundation must be sought within the liberal tradition. My main purpose is to ask whether ethical individualism provides the appropriate framework for a liberal theory of collective rights. I shall answer in the negative. I shall claim that this doctrine must be abandoned if one is to provide room for politics of recognition. Of course, many philosophers believe, along with Will Kymlicka, that ethical individualism is compatible with politics of recognition, but I shall criticize Kymlicka's attempt to reconcile these two doctrines. The defects of his theory of group-differentiated rights will be explained by his favorable inclination toward individualism. I will then conclude the paper by describing an alternative liberal theory of collective rights.

## **Liberalism and the Nation-State**

I said that politics of recognition have to be implemented in order to ensure the stability of multination states. The rationale behind such a suggestion is that one cannot expect a nation to accept the devolution of its sovereignty to an encompassing state and, at the same time, accept that it will not have any recognition at all as a nation within that state. In my view, those who defend multination states and argue against politics of recognition defend a position that leads to political instability. I shall not however provide in this paper an argument for this particular point. My main concern is not with stability but with justice. Thus I take it for granted that nations (or peoples) seek some kind of political recognition and that if they cannot get it from the encompassing state, they will try to get it from the

international community by becoming a sovereign state. So I assume that the viability of multination states is intimately related to the successful application of politics of recognition.

I shall begin by trying to explain why liberal philosophers have been inclined to argue both for the integration of some nations into multination states, and against politics of recognition. The explanation of the motivations behind this position is that there existed a very close relationship between liberalism and the traditional nation-state model, according to which the state is supposed to be composed of an ethnically or culturally homogeneous society. This relationship has until recently escaped most liberal philosophers for reasons that I shall quickly dwell upon. We will then be in a position to explain the deep causes behind the philosophical conservatism of many liberal philosophers towards politics of recognition. It will be shown that if one sees the homogeneous nation-state as the only acceptable form of political organization, one is then extremely reluctant to recognize the collective rights of groups. I shall claim that the nation-state still influences those who discuss the issues of political recognition even when they want to make room for alternative models of political organizations such as the multination state model. The crucial point is that the traditional nation-state model is responsible for the acceptance of ethical individualism as an apparent constitutive doctrine of liberalism. And it is ethical individualism that most philosophers invoke in their arguments against the admission of collective rights. Let us now examine these issues more closely.

Given the increasing importance of multination states, liberal philosophers should have been inclined to adopt politics of recognition toward nations. So it is surprising to see that so many among them are still reluctant to endorse such an approach. We must therefore try to explain why they are so uneasy about accepting to recognize collective rights of peoples. The explanation I favor runs as follows. If one is a liberal, one must argue for the *fundamental* character of individual rights and liberties. These principles cannot be overruled by any other principles and they must, therefore, have an absolute priority over the particular interests of groups. And as long as we are considering society through the lens of an ethnically or culturally homogeneous nation-state, no other principles can compete with the fundamental rights and liberties of the individual. The reason is that, within homogeneous nation-states, the only available groups are particular interest groups defending their own views about the good life. These particular interests must be resisted for the sake of preserving liberal neutrality and the primacy of justice over particular conceptions of the good.

The situation is of course quite different in multinational societies, for then, the society as a whole is composed not only of individual citizens and particular interest groups, but also of many different nations. But since there has been, historically, a very deep connection between liberalism and the nation-state, and since liberal philosophers have tended to ignore this intimate connection, it has influenced their appreciation of the demands made by particular subgroups. So they have a tendency, even within multination states, to conflate nations with particular interest groups. The conclusion is that liberal philosophers are still very much under the influence of the traditional nation-state model and this is why they are so reluctant to accept collective rights.

But is it true to suggest that there has been an historical connection between liberalism and the traditional nation-state model? Why should it be so? Is it not paradoxical to suggest that there is a profound link between liberalism and nationalism? There indeed appears to be, as argued in Kymlicka (2001a), a “paradox of liberal nationalism”, for liberal ideals are universal in character, while nationalism seems to go hand in hand with a certain form of *particularism*. And some will then want to

argue on that basis that liberalism must transcend all forms of particularism. But we should perhaps not draw these conclusions too hastily. Nation-states are not bound to remain particularistic, parochial, atavistic societies, and we do not need to invoke a post-national identity or hail the virtues of constitutional patriotism in order to overcome such particularistic inclinations. Nation-states may favorably welcome universal principles. Moreover, they may even be good illustrations of what Kymlicka calls ‘societal cultures’, understood as societies with a common language, a common history and a common set of institutions. (See Kymlicka 2001b, 25; Kymlicka 1995, 76-79) Within these institutions, societal cultures provide a wide range of options, described by Kymlicka as a ‘context of choice’. (See Kymlicka 1989, 13-17, 47-8, 50-1; Kymlicka 1995, 82-84) It can then be claimed that it is only within a particular societal culture, with its particular common language, history and context of choice, that liberal universal principles can concretely be realized. This context of choice would not exist without a particular societal culture. And so, liberalism itself would not be possible without particular societal cultures.

Now, historically, societal cultures have tended to take the form of nation-states. So nation-states might have been, initially, the sole providers of a liberty to choose between a rich variety of different moral, cultural and political goods. Consequently, the nation-state model has been, at least historically, a condition of possibility for the exercise of individual freedoms and liberties. And so, far from constraining liberties and individual choices, nation-states, understood as involving complete societal cultures, were seen as providing a necessary condition for the existence of individual choices and liberties. The presence of a societal culture is not a sufficient condition for the presence of a wide context of choice, for there can be non-liberal societal cultures, but it is certainly a necessary condition.

It is of course crucial to acknowledge the fact that societal cultures are in some mild sense ‘particularistic’. A common public language, compatible with the existence of minority languages, a common public history (interpreted and criticized in different ways) and a common set of institutions (with a specific context of choice), are particular contingent and historical features of a society. But these must not be confused with other particularistic features such as traditions, customs, habits, moral ends, conceptions about the common good or conceptions about the good life. The former features relate to what Kymlicka calls a “structure of culture”, while the latter relate to what he describes as the “character of culture”. (See Kymlicka, 1989, 79-81, 165-7, 169-71; Kymlicka 1995, 77) Nation-states may in a sense coherently be ‘particularistic’ and ‘liberal’ when they are seen as having a particular structure of culture, but they cease to be liberal as soon as they become intimately associated with a unique character of culture. Liberalism is, by definition, compatible only with societies that allow for an irreducible plurality of cultural characters.

The importance of whole societal cultures is precisely what a liberal philosopher trained in the tradition of the nation-state model may have failed to see. The framework of the nation-state has always been taken for granted and, for that reason, the motivation for protecting whole societal cultures was not always explicit. (Canovan 1996) Many liberal philosophers were thus never able to explain why, historically, the nation-state model was considered as the only good form of political organization. But now that we feel the urge of questioning this traditional model, some are eager to engage into such a critical assessment without reflecting upon the importance of whole societal cultures, which were after all implicitly recognized when nation-states were accepted without criticisms. Liberal philosophers do not always pay enough attention to the writings of classic liberal thinkers such as Mill, Green, Hobhouse and Dewey, (Kymlicka 1989, 207) and so they do not develop appropriate argumentative

tools that would enable them to illustrate the virtues of societal cultures. At the same time, they are still very much influenced in some sense by the traditional nation-state model in their attitude toward subgroups. They adopt the attitude of those philosophers whose approach was always from within the perspective of the nation-state, and they are for that reason inclined to interpret the demands of whole societal cultures as similar to those of particular interest groups.

Some liberals also had the tendency to defend the stability of their own state without even raising any questions concerning the nation-state political model. But now that the state is confronted to the demands of minority nations, they have begun to argue in favor of multination states and have used these arguments as an alibi against the demands of minority nations. It is the increasing demands of recognition formulated by minority nations that explain their newly discovered interest for the multination state. But it is also their inability to think about these demands outside of the framework of the nation-state that explains their tendency to confuse them with those of particular interest groups. So their somewhat confused defense of the multination state is strangely identical to the one that they used to take for granted concerning the traditional nation-state. For practical purposes, they still support the *status quo*, but the labels have changed: instead of promoting the nation-state, they hail the virtues of the same political order, but now describe it as a 'multination state'.

As we have seen, the source of the problem is that liberal philosophers still take for granted many aspects of the traditional nation-state model. They do not explicitly reflect upon the importance of societal cultures, and so they do not accept any form of political recognition for particular subgroups in a multination state, even if these happen to be whole societal cultures, and they react against the demands of those groups in a conservative way in order to maintain the integrity of the encompassing state. Therefore, even if they pay lip service to multination states, the policies that they tend to advocate turn out to be very similar to those that were made from the perspective of the traditional nation-state.

### **Liberalism and Ethical Individualism**

I have tried to explain why liberal philosophers have been so reluctant to recognize the fundamental character of collective rights for groups belonging to societal cultures. They failed to remove themselves completely from the traditional nation-state model in which groups were just particular interest groups. Their mistaken assimilation of the collective rights of societal cultures with the particular interests of pressure groups is therefore at the source of this important neglect. Within the confines of a homogeneous nation-state, the only possible group interests are those of particular interest groups, and they cannot imaginably be those of full societal cultures.<sup>1</sup> But the more the connection between liberalism and the traditional nation-state model is made explicit, the more liberal philosophers are rightly inclined to argue that liberalism need not be conceived as logically entailing an endorsement of the nation-state model. Unfortunately, since they are still very much influenced by this traditional model, they remain reluctant to accept any kind of political recognition for groups.

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<sup>1</sup> The connection between nation state building and the rejection of collective rights for minority groups is strikingly illustrated by the recent judgment of the French Constitutional Council. Its refusal to recognize the existence of a Corsican people or to ratify the European Convention on minority languages is justified by the argument that recognition of collective rights for minority groups would threaten the existence of a single French people.

However, most liberal philosophers now agree that there has been such an historical connection between liberalism and nationalism and some among them even agree that it is at least partly responsible for the failure to accommodate the demands of minorities. But very few are also willing to question ethical individualism, that is, a comprehensive doctrine according to which (i) personal identity is prior to moral identity, (ii) individuals are the ultimate sources of moral worth and (iii) autonomy is the most fundamental liberal value. Most liberals are still committed to ethical individualism, and they do not see that this particular doctrine is a side effect of the historical connection that used to hold between liberalism and nationalism. They do not see that it is precisely because of the continuous influence of the nation-state model that the individual is seen as the basic unit of the liberal state. Indeed, within homogeneous nation-states there are no subgroups forming whole societal cultures: there are just individuals and associations of individuals. So when we assume the nation state model, groups do not appear to be autonomous sources of valid moral claims, for the only groups that make claims within such a model are particular interests groups. Since these groups are associations of individuals, the validity of their claims depends on the validity of the claims made by the individuals that compose them. It is also because of the nation-state model that individual rights appear to be the only rights enjoying an absolute priority. If liberals endorse the primacy of justice over conceptions of the good, they have to assert the absolute priority of individual rights over the collective rights of particular interest groups. The conclusion is that, if we take for granted the traditional nation-state model, and thus take for granted the crucial importance of societal cultures without making it explicit, we are able to show that individuals are the ultimate source of moral worth and individual autonomy is the most important value. We are able to draw this conclusion only because we are assuming the nation-state model. The nation is not within such a model seeking for recognition for it has been given a full political expression. It enjoys full sovereignty and precisely for this reason, political recognition is not a relevant issue. It is thus the nation-state model that enables one to derive from very general liberal principles the doctrine of ethical individualism, and it may then look as though ethical individualism is a constitutive doctrine of liberalism.

But if we are, as I think we must be, ready to separate liberalism from the traditional nation-state model, we should then also be willing in the same vein to separate it from ethical individualism. Just as the nation-state is a particular historical model of political organization that is not logically constitutive of liberalism, the same kind of remark applies to ethical individualism: it is at best only a historical product of liberalism, so it is not logically entailed by it. Indeed, if the crucial importance of societal cultures were explicitly acknowledged, instead of being simply assumed, then societal cultures could be seen in the framework of a multination state as autonomous sources of moral worth and their autonomy might be considered as important as the autonomy of individuals. So there would no longer be any reason to hold that individuals have an absolute priority over societal cultures. Unfortunately, most contemporary philosophers treat ethical individualism as constitutive of liberalism. They fail to see that the doctrine is the natural expression of liberalism only when the traditional nation-state model is assumed. So it appears that adopting politics of recognition will require abandoning ethical individualism. And it might be argued that this move is compatible with liberalism as long as one does not subscribe to the opposite doctrine of 'ethical collectivism', that is, the view according to which the rights of societal cultures must override the rights of individuals. We must seek instead for an ethical pluralism that can accommodate both individuals and societal cultures. If the rights and liberties of individuals remain fundamental, then there is perhaps nothing wrong in asserting that the rights of peoples must also be treated as fundamental.

Of course, this argument presupposes that ethical individualism is incompatible with a genuine political recognition of peoples. And as we all know, Will Kymlicka believes that this is not true. Kymlicka precisely wants to show that it is possible to defend simultaneously ethical individualism and the political recognition of peoples. (Kymlicka 1989, 177-8) So let us now turn to an examination of this particular point of view.

### **Kymlicka's Theory of Group-Differentiated Rights**

Kymlicka argues that liberal philosophers have ignored the problems raised by the protection of minority cultures, and he claims that this is because those philosophers belong to nation-states. Their own particular political experiences have influenced their judgment on these issues. So in a way, Kymlicka is saying something that confirms my own diagnosis. (Kymlicka 1995, 50-57 and 93) He sees the nation-state as an external influence that plays a role on the judgment of liberal theorists, and this also explains why the nation-state model has been present in the very foundations of their theoretical framework. When Kymlicka argues in this way, he does not only allude to sociopolitical circumstances that explain the absence of their theoretical concern for minorities, for he also thinks that it explains the prevalence of the nation-state model within their theories. So Kymlicka does to some extent acknowledge the historical connection that holds between the traditional nation-state model and liberalism. But he somehow thinks that ethical individualism remains a fundamental doctrine and that it has nothing to do with the particular historical influence of the nation-state model. He believes that ethical individualism is not to blame for explaining the reluctance of liberal philosophers toward politics of recognition. This is why he invokes particular historical circumstances such as the failure of Minority Treaties, the demands of the Afro-American Black community for racial desegregation, and the American ethnic revival in the USA, as the main explanations.<sup>2</sup>

Kymlicka wants to put the blame on something else than ethical individualism, because he endorses the doctrine. He believes that ethical individualism is not responsible for the negative attitude of liberal philosophers toward collective rights, since the adoption of a regime of collective rights is according to him compatible with this doctrine. He also made it abundantly clear that he wishes to remain an individualist. He maintains that individuals are the ultimate source of legitimate claims and the ultimate unit of moral worth. His version of liberalism is explicitly presented as a comprehensive doctrine based on individual autonomy. He is thus committed to ethical individualism.<sup>3</sup>

I shall now show that this philosophical position influences his account of collective rights and that it is responsible for many important difficulties of his theory. I shall show that his individualistic account does not do full justice to the political recognition of peoples.

So let us look at the account more closely. First, Kymlicka discards the use of the expression 'collective rights' and prefers to use instead 'group-differentiated rights'. This might be seen only as a terminological matter, but it conceals deeper issues. For instance, he restricts the application of group-differentiated rights to minorities and he does not allow it to describe the rights of majorities or whole communities. This is surprising since, by definition, collective rights should be seen as involving

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<sup>2</sup> See for instance Kymlicka 1995, 57-69.

<sup>3</sup> Kymlicka rejects 'abstract individualism' understood as an atomistic view that supposes the absence of ties that bind the individual to its community (Kymlicka 1995, 127-8), but he endorses ethical individualism as the view according to which individuals are the "ultimate units of moral worth". See also Kymlicka 1989, 140.

collectivities such as whole nations and not just what Kymlicka calls ‘national minorities’. After all, shouldn’t we allow collective rights to national majorities as well as to national minorities within a society? Is it possible to say that, in Belgium for instance, the Walloons should have collective rights but the Flemish should not have any? Some nations are majorities and this is not a reason to deny them collective rights.

Furthermore, Kymlicka tries to distinguish between two sorts of ‘collective’ rights: those that impose internal restrictions on the individual liberties of citizens and those that invoke external protections for minorities in their relationship to majority cultures, and he only accepts the latter sort as legitimate. (Kymlicka 1995, 35-44; 2001b, 22) This normative distinction assumes that it is impossible to justify independently restrictions on individual rights made for the sake of fostering a common civic identity. Not only does he wish to treat individual rights as fundamental, he also apparently sees them as not available for any restriction whatsoever, not even cultural restrictions that stem from the structure of the culture. (Kymlicka 1995, 36, 202 footnote 1)

Kymlicka is also forced to deny that collective rights must be individuated partly by reference to the subject of the right. (Kymlicka 1995, 46) For him, the ultimate subject of those rights may in many cases be the individual. Of course, he is certainly correct to point out that most collective rights are not about the *primacy* of the collectivity over individuals (Kymlicka 1995, 47), but he also wants to add that they are compatible with the *primacy* of the individual. Instead of equally defending the respect for the group and the respect for the individual, he argues that “both sides of the dilemma concern respect for the individual.” (Kymlicka 1995, 150) He therefore has a tendency to individuate collective rights only with reference to their objects, i.e. institutional or participatory goods, and not by reference to their subject. Collective rights are according to him institutional goods that are claimed by individuals.

Finally, since collective rights must ultimately be construed as rights that can be claimed by individuals, the justification for their inclusion in a constitution must rest upon the value that individuals ascribe to their own culture. Kymlicka must therefore postulate a rational preference of the individual toward her own cultural allegiance, and he must suppose that individuals treat their cultural allegiances as primary goods. (Kymlicka 1989, 166) So he endorses important claims in moral psychology. (Kymlicka 1995, Ch. 8, especially 158-163)

### **A critical assessment of Kymlicka’s theory**

One may wonder whether Kymlicka’s notion of group differentiated right has anything to do with what is usually meant by ‘collective right’. He sees group differentiated rights as meant for individuals, enjoyed by individuals and claimed by individuals. We cannot impose any cultural restrictions whatsoever upon individuals, for individuals are the true, ultimate, subject of valid moral claims concerning group-differentiated rights, according to Kymlicka. In short, this approach appears to provide justification not for collective rights but for special kinds of individual rights, those that concern institutional goods. So it is perhaps for that reason that Kymlicka chooses to describe the relevant sort of right by using a new label.

Quite apart from this general line of criticism, we must look very closely at the different theses involved in the argument. Unfortunately, most of them are false. First, it is simply not true to suggest, as Kymlicka sometimes did, that liberals must somehow commit themselves to ethical individualism.

There are liberal philosophers, most notably John Rawls 1993a and Joseph Raz 1986, who have developed liberal theories that avoid commitment to ethical individualism. As Kymlicka himself now seems prepared to accept, liberal philosophers can coherently reject that particular doctrine.

Let us however consider more urgent difficulties. The distinction between external protections and internal restrictions cannot be maintained. A regime of collective rights for a minority nation within the state cannot avoid imposing some (reasonable) restrictions on the rights of individuals within the nation. External protections inevitably lead to internal restrictions and so the distinction between these two sorts of collective rights becomes problematic. For example, language laws in Quebec simultaneously involve external protections and internal restrictions.<sup>4</sup> They can be justified as means of protecting French Quebecers from the majority of anglophones living on the North American continent, but at the same time, they force immigrants to send their children to French schools, they impose a certain predominance of French on commercial signs and they impose French as the language used at work. Of course, Kymlicka accepts Quebec's language laws and rightly sees them as legitimate, but he tries to account for them only in terms of external protections, and this does not seem to be possible.

Kymlicka is well aware of this difficulty and tries to solve it in the following way. His argument appears to be that internal restrictions cannot autonomously be justified and are only acceptable if they are instrumental for external protections. So the distinction between acceptable and non-acceptable group differentiated rights is one that holds between those rights whose main justification invokes external protections, while the unacceptable rights are those that are justified solely on the basis of being internal restrictions. Kymlicka is willing to accept internal restrictions, but only in so far as they serve to protect the minority from the majority. But the problem is that this fails to capture an essential dimension of the collective rights of peoples. Whether they are majorities or minorities and whether they require external protections or not, peoples have the right to impose reasonable restrictions such as the promotion and protection of a common public language (compatible with the protection and promotion of minority languages), a common public culture (compatible with the promotion and protection of minority cultures) and a common public history (compatible with the promotion and protection of the historical minorities). These policies amount to the fostering of a common civic identity. Kymlicka should know that the fragmentation of the nation may come not only from outside but also from inside forces and that social cohesion requires a minimal common civic identity. But he prefers to describe policies purporting to secure social cohesion as instances of 'nationalism' and not as policies that promote and protect the collective rights of peoples. For him, they appear to be merely nation-building policies and collective rights are meant to preserve minorities from nation-building policies. (Kymlicka 2001b) Of course, I agree that very often minorities are subjected to the tyranny of the majority and to nation-building policies and I also agree that a system of collective rights can serve to counterbalance these external forces. But only his obsession with ethical individualism can explain why he feels compelled to avoid the terminology of collective rights for national majorities or majority peoples. Most citizens in liberal societies accept to live with restrictions on their individual liberties such as those that are involved in a common civic identity. They accept to use a common public language and a common public structure of culture, and they relate to the same common public history. These policies are not perceived as unacceptable restrictions on their individual liberties for they are

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<sup>4</sup> For a similar argument, see Brighouse 1996, 401. I agree with Brighouse on this point even if Brighouse is wrong to use this argument against politics of recognition and against nationalism in general. Needless to say that on those crucial political issues of nationalism and politics of recognition, I side with Kymlicka and against Brighouse.



reasonable requirements for the exercise of a full citizenship. Moreover, suggesting that the society as a whole has the right to impose such restrictions on the liberties of its citizens must not be interpreted as a case where collective rights override individual rights. It is more like striking an appropriate balance between the fundamental interests of individuals and those of whole communities. Societal cultures cannot survive without a minimal common civic identity. This imposes reasonable restrictions upon the liberties of individuals, just as fundamental liberties of individuals impose reasonable limitations on the collective rights of peoples. And it will not do to reply that imposing a common civic identity can be interpreted as merely instrumental for individual liberties, for there are independent justifications for the protection of whole societal cultures that have nothing to do with individual values.<sup>5</sup>

Of course, Kymlicka agrees completely with most of this. He is perfectly aware of the fact that external protections always come with internal restrictions, and that there are good arguments to justify reasonable restrictions on individual liberties such as those that I have been alluding to. So why does he refuse to describe those internal restrictions as an acceptable form of collective rights? The only answer I can come up with is his endorsement of ethical individualism.

It is also important to note that Kymlicka uses some rhetorical arguments in his campaign against internal restrictions. In order to be more convincing in his arguments against these sorts of collective rights, he characterizes them as involving the imposition of traditions, ways of life and illiberal customs. He gives a communitarian twist to the idea of an internal restriction in order to turn it into a clearly unacceptable notion. (Kymlicka 1995, 37-44; 2001 22) He suggests that internal restrictions must impose limitations on “the right of individuals within the group to revise their conception of the good.” (Kymlicka 1995, 161) But what about “imposing” a common public language, a common public history interpreted and criticized in different ways, and a common public structure of culture? Most citizens accept such internal restrictions within each societal culture. Shouldn’t we avoid confusing these internal restrictions with the imposition of particular views about the good life? Must those internal restrictions be rejected even if they are appropriately constrained by a charter of individual rights and by policies that seek to protect the collective rights of minority cultures within such a society?

Moreover, the notion of an unrestricted fundamental individual right is a pure abstraction that never exists in practice. We already are aware of the fact that freedom of speech is constrained by laws against hate literature. Freedom of association is constrained by anti-gang laws. The right to physical integrity is constrained by the right to self-defense. The right of the public to be informed is constrained by the right to privacy. Even the right to life is constrained by laws on abortion and euthanasia, and perhaps eventually by laws concerning assisted suicide. So similarly, it might be argued that we can acknowledge the need to constrain the rights of citizens by “imposing” a common public structure of culture, as long as it is compatible with the preservation of minority cultures within the nation. In other words, by allowing for collective rights that would impose reasonable restrictions on individual rights, we are doing nothing more than applying some additional reasonable restrictions on individual liberties. Most societies impose a common public language, a common public history and a common public culture, and it is perhaps not necessary to abandon those policies in order to go beyond the traditional nation-state model, for we must in the context of a multination state allow each societal culture within

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<sup>5</sup> As we shall see, societal cultures must be protected and promoted for the sake of cultural diversity. Here, I am not claiming that cultural diversity has an intrinsic value. It may have only an instrumental value for the survival of the human species.

the state to foster its own civic identity. As a matter of fact, allowing component nations to do so is precisely what can ensure the viability of the multinational state itself. It may perhaps not always be possible to impose a single *lingua franca*, a single common culture and a single common history when the state is multinational, and so citizens must then rely only on a very thin common civic identity. It might then be wondered how such a state could survive. However, this discrepancy may be corrected by adopting politics of recognition toward the component nations that allows them to impose reasonable restrictions such as those that follow from fostering a common civic identity. Of course, Kymlicka agrees with the importance of societal cultures, agrees that societal cultures must have self-determination, but he somehow does not agree that the reasonable internal restrictions of minority societal cultures can be justified in their own right, for they apparently are only acceptable for him if they are instrumental for their external protection, and he does not seem to be willing to consider the promotion and protection of a societal culture for a majority or for a whole people as a promotion and protection of their collective rights.

Of course, some would want to discard reasonable internal restrictions imposed by a societal culture upon its members simply by trying to draw a difference between two sorts of restrictions on individual rights: those that are created by the individual rights of other individuals and those that are created by the collective rights of an encompassing group. It is then claimed that the constraints imposed on individual freedoms by the freedoms of other individuals can be tolerated because they serve in this case the general purpose of increasing individual liberties for everyone. And the idea is that internal restrictions imposed by collectivities do not meet this requirement. But this answer won't do as an argument against collective rights if the problem is that they impose restrictions on liberties. It displaces the problem since the issue was initially whether individual rights and liberties may reasonably be restricted or not. Indeed, the argument was supposed to be against there being *restrictions* on individual liberties. But it now appears that individual liberties cannot according to the individualist be restricted *by collective rights*, and this amounts to express qualms against collective rights as such and not against there being restrictions on individual liberties. One cannot have it both ways. If the argument concerns restrictions on individual liberties, we can reply that systems of individual liberties themselves always constrain individual liberties. But if the argument concerns the source of the restriction, then the problem is about collective rights as such and not about the fact that they impose restrictions. Of course, the ultimate argument is that the *particular restrictions* that are imposed on individual liberties by a system of collective rights are precisely the restrictions that one finds unacceptable. But I have argued that we must distinguish between the restrictions that stem from the requirement of a common language, a common structure of culture and a common history, and those that stem from imposing a particular character of culture. And I have argued that the former are acceptable in principle as well as accepted in practice in most if not all societies.

Even if Kymlicka makes the distinction between the character and the structure of culture, he tends to conflate the two notions when it is time to determine whether or not some internal restrictions are intrinsically acceptable. He surprisingly chooses to interpret internal restrictions as the imposition of cultural characters and not as the imposition of a particular structure of culture. I have argued that this does not do justice to a reasonable regime of collective rights aiming to implement a common civic identity. In other places, he simply describes the imposition of common languages, cultures and histories as instances of 'nationalism', but he offers us no reasons for distinguishing between nationalism and the defense of the collective rights of a people. If we accept this equation, we have to accept the reasonable character of some internal restrictions whether or not they are also instrumental

for external protections. But if we do so, then it appears that collective rights compete with individual rights and that no particular hierarchy holds between these two sorts of rights. This, in turn, casts some doubt of the possibility of deriving an argument for collective rights simply by invoking individualistic arguments.

By ruling out reasonable internal restrictions, Kymlicka gives a truncated picture of collective rights. He fails to show that individual rights must in no way be culturally restricted at all.<sup>6</sup> Of course, he accepts nation-building policies as long as they are appropriately constrained by a system of individual liberties and a regime of group-differentiated rights for minorities. But he fails to notice that nation-building policies provide the best instance of the exercise of collective rights, for they seek to secure the self-determination of the people as a whole. Since Kymlicka himself does not argue against nation-building policies, but rather seeks to constrain them, he should not have rejected collective rights that impose internal restrictions on individual liberties. So why does he think otherwise? It is because he theoretically wants to restrict the use of group-differentiated rights to minorities. This is more than just a terminological fiat on the part of Kymlicka, for it fails to do justice to a very important class of collective rights, and it provides a distorted picture of the issue in order to force collective rights into an individualistic Procrustean bed.

Another difficulty is this. If we try to individuate collective rights by reference to the object of the right and not also partly by reference to the subject of the right, we are then unable to explain the difference between the cultural demands made by individual immigrants and those made by the members of welcoming national communities, for both could in principle have equal legitimate moral claims to cultural protection. Indeed, how can we decide who must be integrated into whose community if, in both cases, we are in the presence of individuals who claim protection for their own societal culture? We are naturally inclined to resolve this contentious issue by saying that immigrants have an obligation to integrate within the welcoming community. They do so because welcoming communities have the collective right to survive and flourish, and they would not be able to survive if immigrants would fail to integrate. At least this is true of immigrant societies such as Canada and the United States. We are naturally inclined to believe that integration policies are reasonable internal restrictions on the individual liberties of immigrants. But as we have seen, this is not an available option for Kymlicka, and not only because he does not allow for internal restrictions. The most important problem here is that the subject of the right is irrelevant according to Kymlicka. He must try to find a way to justify the integration of immigrants without having recourse to the welcoming community, seen as a genuine bearer of rights, for he wants to say that the subject of group-differentiated rights need not be collective entities. But then how can he explain the intuition that there is clearly an obligation to integrate on the part of the immigrant?

Kymlicka tries to avoid the issue by suggesting that an immigrant is someone who has renounced her linguistic and cultural affiliations.<sup>7</sup> In other words, he avoids the issue of determining which individual right overrides the other by saying that being an immigrant amounts to a renouncement of one's rights. Of course, most immigrants accept to integrate. Most of them learn the

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<sup>6</sup> For a discussion, see Kymlicka 1995, 152. See also 42-44. The overall idea is that to be acceptable, collective rights must first and foremost be seen as external protections.

<sup>7</sup> Kymlicka writes: "After all, most immigrants (as distinct from refugees) choose to leave their own culture. They have uprooted themselves... In deciding to uproot themselves, immigrants voluntarily relinquish some of the rights that go along with their original national membership." Kymlicka 1995, 95-96.

language of their welcoming community and are willing to be part of its culture, but in countries of immigration like Canada, Australia or the US, a growing number of immigrants are at the same time able to live into local immigrant communities in which they are in a position to keep their own language, culture and history. So it is wrong to suggest that they have renounced to speak their own language and renounced an attachment to their own culture or history. Most of the time, immigrants do not realize the great pains that are associated with having to adopt a new country and having to adopt a new language, a new culture and a new history. So it cannot be claimed that they have renounced their allegiance to their own national identity. Even if they are willing to integrate, they are not willing to assimilate. So I am afraid that Kymlicka's hypothesis is empirically false. He is wrong to interpret the willingness of immigrants to integrate as a proof that they have decided to abandon their language, culture and history. And he is wrong to interpret this criticism as suggesting that immigrants are unwilling to integrate. Everyone accepts that most immigrants are willing to integrate. The question is whether they also wish to abandon their own language, culture and history. I claim that they don't. And so I claim that members of an immigrant community and members of the welcoming community both want to keep their own language, culture and history. And if we consider only individuals and their moral claims, we are unable to distinguish between the two sorts of claims and thus unable to derive an obligation to integrate on the part of immigrants. Once again, ethical individualism proves to be a rather shaky foundation for a theory of collective rights, for we are unable to justify on its ground an obligation to integrate on the part of immigrants. That is, we are unable to do so without additional false empirical hypotheses.

We ask immigrants to integrate (but not necessarily assimilate) into their welcoming community. But why can we do so? Why can't they refuse such integration? Couldn't it be the other way around? The members of the welcoming community should perhaps be the ones who have to integrate in the immigrant communities. Why not? The answer is obviously related to the collective rights of the welcoming community. But since Kymlicka sees the individual as the ultimate bearer of the collective right, and since he is unwilling to accept internal restrictions, he must somehow try to explain why the individual right of someone belonging to a welcoming community should supersede the individual right of the immigrant for cultural protection. And here, I am afraid, no answer is forthcoming. Since he is unable to distinguish between the claims of the members of a welcoming community and the claims of the members of an immigrant community, Kymlicka is thus unable to explain why we intuitively tend to think that immigrants must integrate.<sup>8</sup> This is why he postulates an *ad hoc* and convenient empirical hypothesis to the effect that immigrants by definition are people who have renounced their own linguistic and cultural affiliations. But this *ad hoc* stipulation is false and conceals a genuine defect of the theory.

Let us consider one last difficulty. Kymlicka wants to derive the justification for a regime of group-differentiated rights by relying solely on individualistic grounds. But he cannot just invoke the importance of societal cultures for individuals in general by saying that they provide the necessary condition for the implementation of a system of liberties. Such an argument would indeed be ultimately founded upon individual values, but it is clearly insufficient. The reason is that it cannot serve as a basis for the protection of *each particular* societal culture. It is compatible with the existence of just one large societal culture embracing all the citizens of the world. If we argue simply that societal cultures are important in general for the individual, we cannot rule out the possibility of having only one societal

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<sup>8</sup> There are places where Kymlicka writes that the bearer of the right must be the group (Kymlicka 1995, 45), but these rights seem to be instrumental for the protection of more fundamental individual rights.

culture for everyone. The problem is of course that we seek to justify the protection of each particular societal culture. True, we could translate *initially* a normative argument to the effect that societal cultures are important in general into institutional measures that could ensure the protection of each one of them. But we could not rule out as morally problematic the assimilation of some of these cultures into a single assimilating society. The social fact of assimilation and even assimilation policies could be pursued in perfect accordance with the principle.

So we need to add an additional principle. Could it be simply that individuals want their own culture to be protected? This, I am afraid, will not do either, at least in those societies in which individuals have many different allegiances. In societies where individuals have multiple identities, they may want to preserve many different allegiances and not just their own societal culture. If the groups that can be promoted and protected are all of those groups that citizens want to preserve, then we are not in a position to identify societal cultures as the main groups that are entitled to a regime of collective rights. The problem is that we seek to justify rights only for societal cultures and not for all the groups. Since rational preferences concerning group allegiances vary from one citizen to another and vary through time for a single individual, we cannot simply rely on the willingness of individuals to preserve all their particular group allegiances in order to justify a regime of collective rights for societal cultures. Kymlicka thinks that among all groups, only the members of societal cultures can legitimately claim group-differentiated rights. So there must be an additional premise in the argument that enables him to filter out all those groups that cannot legitimately claim for cultural protection. The appropriate missing premise is that individuals rationally prefer a regime that can guarantee protection for their own national affiliations, that is, their own societal culture. In other words, it is claimed that the moral psychology of individuals confirms the importance of societal cultures as a primary social goods for individuals. If we are to provide an individualistic justification for the protection only for societal cultures, then Kymlicka must claim that cultural affiliations occupy the first position in the minds of everyone. (Kymlicka 1989, 166)

Unfortunately, it has been argued convincingly by Allen Buchanan and many others that individuals do not always see their own societal culture as a primary good. (Buchanan 1996) So it is wrong to suggest that people agree on the primacy of their own affiliation to their societal culture. Rational preferences may vary from person to person, and vary from time to time for a single individual. Indeed, some even give a very low priority to their own societal affiliation. So we cannot justify a regime of collective rights for societal cultures by considerations pertaining to the existence of a rational preference in the moral psychology of citizens. Even worse, if we were trying to impose a single ranking of allegiances on that basis, we would be violating the principle of equal respect for individuals. We would be imposing a particular hierarchy of group affiliations that would go against the particular hierarchies of many individuals.

Of course, Buchanan's argument presupposes that Kymlicka is right in trying to seek for an individualistic justification for collective rights. The only justification for collective rights is according to him to be sought in the rational preferences of individuals. And he agrees with Kymlicka that individuals do give the highest priority to their different 'cultural' affiliations. (Buchanan 1994) But he disagrees with Kymlicka concerning the privilege afforded to societal cultures, for there are many other cultural groups (religious, ideological, etc.) that can also claim for cultural protection. He believes that there are no individualistic justifications for the privilege afforded to nations, or societal cultures,

among all cultural groups. Thomas Pogge made a similar argument based on the principle of equal respect. (Pogge 1997)

This line of argument can also be pursued even further and it can be shown to have many other damaging effects for collective rights. If Buchanan and Pogge are right, the only way to harmonize a theory of collective rights with the rational preferences of individuals would be to allow for the recognition of many different cultural, linguistic, religious, ethnic and ideological groups in the public realm. There are thus many equally good candidates for a regime of collective rights. But now the problem is this. It might be argued that if the justification has to be founded upon the rational preferences of individuals, we will inevitably have to deal with a proliferation of groups competing with each other for recognition. It will then be very tempting to conclude that this leads to a *reductio ad absurdum* of most theories of collective rights. (Weinstock 1999)

So we have every reason to believe that Kymlicka's individualistic justification for collective rights fails. He is unable to account for a large class of collective rights, namely those that involve reasonable internal restrictions, unable to account for the collective rights of national majorities or whole peoples, unable to justify theoretically the obligation of immigrants to integrate and unable to provide an individualistic justification for the privilege afforded to societal cultures. The conclusion is that one may have to choose between ethical individualism and politics of recognition. This in a way is not a very happy conclusion, for we have all the reasons to believe that most liberals will choose the former, but it is not a reason for failing to have the courage to defend the latter. Liberal philosophers must have the courage to abandon ethical individualism and embrace politics of recognition for peoples. Kymlicka is right to claim that among all the groups, societal cultures are special. But he is wrong in trying to derive this claim from ethical individualism.

### **Toward a Law of Peoples**

Let me just give some indications of the kind of arguments that could be made in favor of collective rights for peoples. As we have seen, there are reasons to believe Kymlicka has failed to show that ethical individualism could provide a secure foundation for politics of recognition. The problem is perhaps that Kymlicka wants to deploy arguments for liberalism that engage us into a comprehensive doctrine. He gives the impression that we do not have the choice in this regard, and he seldom acknowledges alternative approaches. In my opinion, the appropriate liberal framework is Rawls' political liberalism. (Rawls 1993a) This is an approach that avoids any commitment to ethical individualism. It is also one that can account for the equal importance of individuals and peoples. It leads one to accept that peoples as well as individuals are autonomous sources of moral worth. It has led Rawls to accept a second original position involving peoples. See Rawls 1993b and 1999.

There are important defects with Rawls' version of the law of peoples and these have been identified by many commentators.<sup>9</sup> Rawls fails to provide a true liberal law of peoples, he tolerates non-liberal regimes and defends a 'realistic' conception of international relations dominated by sovereign states. Although I cannot go into details here, I believe we can provide a version of political liberalism that avoids these unwanted consequences. (Seymour, 2003) Political liberalism can be accepted as a truly universal doctrine. The law of peoples that I wish to defend is one that must incorporate the two fundamental principles on which a consensus had been achieved at the domestic level. Under such a

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<sup>9</sup> See for instance, Beitz 2000, Buchanan 2000, Kuper and Pogge 1994, 2001.

version, tolerance remains a crucial notion but it applies only to the different conceptions of the persons and to the different conceptions of peoples. This tolerance is what justifies the introduction of a political conception of the person and a political conception of peoples. But it does yield tolerance toward non-liberal regimes. It seeks to achieve a more appropriate balance between the interests of individuals, peoples and sovereign states.

It is true that Rawls did not consider in detail the possibility of applying the law of peoples within multination states. The eight principles that he considers are principles that hold for peoples with their own states and they do not apply to stateless peoples. But one must not forget that Rawls sees his own law of peoples only as a first approximation. It is a simplified version to be complemented by rules for creating federation of peoples and rules for self-determination and secession. So one must not confuse his account with a final definitive account. Just as, in the domestic case, Rawls chose to consider only a closed society forming a nation-state, with no immigration and no contact with other peoples, and one that we enter by birth and leave by death, he also works within idealized assumptions at the level of international relations, for he now assumes that all peoples have their own states. This is an extreme simplification and Rawls is very well aware of this. So it is wrong to conclude that, according to Rawls, the law of peoples has no application within the confines of actual multination states. For it would amount to ignore the fact that Rawls has provided only an extremely simplified model.

The question remains however: how can we justify a regime of collective rights for peoples if their importance cannot be accounted for in terms of the value afforded to them by individuals? What is the additional missing premise that must be added to the claims according to which societal cultures are in general crucially important for individual liberties and individuals want their societal culture to be protected? As we have seen, these two claims do not by themselves justify politics of recognition for peoples. The first one does not enable us to justify protections for all societal cultures, and the second one does not enable us to identify peoples as the main bearers of collective rights.

So what can we say in addition to those two initial claims? Let us note first that the value of societal cultures is implicitly accepted by those who wish to defend the equal respect that we owe to the different charts of allegiances in the minds of each citizen. For without a societal culture, there wouldn't be many groups for us to plead allegiance to. It would not even be possible to create one's own chart of allegiances for that too is made possible by the existence of a liberal societal culture. Let us note also that it may very well be that one can justify the importance of societal culture partly by noticing that it is present in the charts of everyone. Even if it does not always occupy the first position and is not treated by everyone as a primary social good, it is unique in that it is the only allegiance that appears in every charts. Some philosophers won't mention their allegiance to their philosophical association, workers may not want to mention their affiliation to a trade union, but everyone one belonging to a given societal culture will mention it somewhere in their own chart. Paradoxically, this is made possible by the fact that we allow for multiple identities. Usually, it is thought that multiple identities may put one's national identity in jeopardy, for it now appears only one among many other allegiances. But as a matter of fact, the truth is quite the opposite. If we have only one affiliation to choose, we may want to exclude our national affiliation. But if the choice is left open to everyone, chances are that our affiliation to a societal culture will be mentioned sooner or later, while this is not the case for our other affiliations. Most if not all other affiliations only appear in some charts and not in others. There are many Christians who will not want to mention their affiliation to that group at all. The reason is perhaps

that if we can imagine ourselves without being affiliated to any association, we cannot easily imagine ourselves removed from all societal cultures. For sure, we can imagine ourselves outside of our own societal culture, but not from any societal culture. It is also true that there are many Canadians that do not see themselves as part of the Canadian societal culture, for instance Aboriginal peoples and Quebecers, but it is because they have their own societal culture and they believe that it is not sufficiently recognized by Canadians. Of course, it is possible to have multiple identities toward many different societal cultures, but once again, some will reasonably be reluctant to plead allegiance to the wider society if it does not recognize their own local societal culture.

All of the above remarks are interesting and important, and must be accepted if we want to ensure a certain amount of respect toward each citizen, but they do not yet provide the justification we are looking for. At best, they serve to pave the way for a solution that in an important sense would not violate the principle of equal respect. If we owe equal respect to the different charts of allegiances, then we must protect also the existence of at least of societal culture. The importance of such a group is also revealed by its continuous presence in the charts of everyone. But then again, this is something that would be jeopardized by the existence of a single big societal culture. So what is the missing premise? The answer is that peoples, and societal cultures in general, play an important role for cultural diversity, and there is an instrumental role played by cultural diversity for the survival of the human species. If cultural diversity is seen as instrumentally indispensable for the survival of the human species, then we would have a good reason to protect and promote each particular societal culture. It is important to note that we are not asserting here the intrinsic value of cultural diversity. (Parekh 2000) Nor are we claiming that cultural diversity is instrumental for individualistic reasons or that it is essential for the survival of the human species. We are instead claiming that it is instrumental for the survival of the human species, and we are treating the survival of the human species as a whole as an intrinsic good, along with individual human beings that we also consider as having an intrinsic value.

In *Multicultural Citizenship*, Kymlicka does for a moment consider the possibility of justifying collective rights by relying on the value of cultural diversity, but he discards it almost immediately. (Kymlicka 1995, 121-123) However, his negative reaction begs the question, for his arguments against it presuppose the truth of ethical individualism. He presupposes that cultural diversity can only be accepted as a value if it benefits the individual. When things are formulated in this way, it then becomes problematic to suppose that cultural diversity could justify collective rights, for the demonstration must show that politics of recognition enhance the benefits of cultural diversity for the individuals belonging to the majority and to the minority. The problem is that if the members of a majority culture accept to adopt a regime of collective rights for a minority group, the individual belonging to this group will not integrate in the majority culture and so the members of the majority won't benefit from the culture of the minority. Simultaneously, since the members of the minority will be less inclined to integrate into the majority, they won't benefit from the culture of the majority. So it seems that a regime of collective rights reduces the benefits of cultural diversity for the individual instead of enhancing it. For that reason, Kymlicka believes that the value of cultural diversity is of no help as a justificational foundation for collective protection. But this is because the benefits of cultural diversity are understood only in individualistic terms. We could choose instead to say that the beneficiary of cultural diversity must be humanity as a whole and not necessarily the individual. And if we were to do so, we could argue that societal cultures have an autonomous moral worth, when compared with the moral worth of individuals, even if their own moral worth derives from their instrumental role in preserving another intrinsic value, namely the survival of the human species. So Kymlicka misunderstands the import of the argument



from cultural diversity. It must, according to him, benefit the individuals belonging either to the majority or to the minority cultures. This is a bias that distorts his appreciation of the value of cultural diversity.

### **Conclusion**

Given the importance of societal cultures for individual freedoms and liberties, Kymlicka has forcefully and, in my view, rightly argued that liberal philosophers must leave some room for the recognition of the collective rights of those groups that can be described as societal cultures. But he was misled to believe that the only way to harmonize liberalism and collective rights was by trying to show that they are compatible with ethical individualism. The fact of the matter is that liberalism is no more logically linked to ethical individualism, than it is to the traditional nation-state model. If liberalism can and must be understood apart from the nation-state model, it can and must be understood apart from ethical individualism.

There are different ways of trying to accommodate collective rights within the theoretical framework of liberalism. Kymlicka's brand of liberalism is one attempt to do so. As we have seen, he endorses a comprehensive version of liberalism that presupposes substantial individualistic claims in moral psychology. (See Kymlicka (2001b), 23, footnote 14) He subscribes to the idea that individuals are the ultimate sources of valid moral claims. (Kymlicka (1989), 140) He also treats individual autonomy as the only fundamental liberal value. (Kymlicka (1995), Ch. 8) And he makes the dubious claim that individuals see their own cultural belonging as a primary good. This approach leads him to espouse a view according to which collective rights cannot be autonomously accepted for they must be derived from individual rights, and they may thus only be accepted if they are construed as external protections instead of internal restrictions. Individual liberties and freedoms cannot according to him reasonably be internally constrained by group rights, and the real subjects of group rights need not be understood by reference to the subject of the right, since the bearers can after all ultimately be individuals. Unfortunately, numerous arguments have shown that the individualistic derivation of collective rights fails. The problem is that ethical individualism cannot do justice to a genuine recognition of collective rights.

Given the importance of whole societal cultures, it appears that in the context of a multination society the state must provide protection not only for individual citizens but also for societal cultures. It must not only protect individual rights and liberties but must also equally protect the collective rights of those groups that are engaged into societal cultures. The appropriate justification is one that invokes the value of cultural diversity for the survival of the human species and that acknowledges the instrumental role played by peoples in securing cultural diversity.

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