

# Political Liberalism and the Recognition of Peoples\*

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## Introduction

Several authors criticize the idea that peoples can be subjects of recognition. And yet, the concept of recognition plays a central role in international law. For example, recognition from the international community is fundamental for a people to become a sovereign state. We also have to ponder the fact that most if not all peoples without a sovereign state are involved in a battle for recognition. This, at least, is the case for the Catalan, Basque, Galician, Corsican, Scottish, Welsh, Walloon, Flemish, Quebec, Acadian, Palestinian and Tibetan peoples, etc., and it is also true for all aboriginal peoples. So why do so many recognition theorists have a critical view concerning the legitimate claims of peoples? In addition to reservations motivated by political reasons, there are also worries that have their basis in a number of philosophical objections. It is the latter that I wish to examine in this paper. I want to answer certain questions about the recognition of peoples – and more precisely, about a particular version of the politics of recognition. I will explore a form of recognition that is manifested in the granting of collective rights for peoples.

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Many philosophers like Michael Hartney (1995) believe that the incorporation of collective rights into a constitution stems from an approach that is counter to moral individualism – which, they would say, is the basis of liberal philosophy. There are also those who like Anthony Appiah (2005, 2006a, 2006b) fear that a formal recognition would lead to essentialism. Others take up the Habermasian distinction between formal and informal spheres, and recommend that the recognition of groups be relegated to the informal sphere. (Habermas 1995, 2005) Some like Jean-Marc Ferry (1996) allow only for a formal symbolic recognition and they think that there is no need for institutional arrangements that give substance to this symbolic recognition. Others like Seyla Benhabib (2002) have a narrative conception of collective identity and believe that it is far too changeable to be the object of a lasting recognition in a constitutional text. There are also those who, influenced by the ideas of Patchen Markell (2003), believe that what is important is not formal recognition. They think it would be sufficient for a people to unveil its identity and for the encompassing entity to take note of this unveiling via a politics of acknowledgement, even if this falls short of a politics of recognition. Although I cannot look at all these philosophical objections, I intend to examine a large number of them in a succinct manner. I want to give a brief overview of a set of arguments that can be developed in answer to those who are opposed to including collective rights for peoples in a constitutional text. I shall try to show that all of these objections can be answered if one adopts a certain version of liberalism based on the political principle of toleration.

### **Defining ‘Peoples’**

Let me first describe the normative framework that I favor. I try to cast my account of peoples in accordance with political liberalism. This account is a variant of liberalism that no longer entails moral individualism. The classical liberalism of Kant and Mill assumes that persons are 'prior to their ends,' that persons are the ultimate sources of moral worth and that autonomy is the most important liberal value. As we shall see, the political liberalism of John Rawls implies three features that can be contrasted from this version. (Rawls 1999)

First, Rawls endorses a political conception of persons and peoples and he is thus neutral concerning the debate between communitarians and individualists. He does not assume that persons are prior to their ends, nor does he claim that persons are defined by their beliefs, goals, values, traditions and views about the common good or about the good life. Secondly, he also treats persons and peoples as two autonomous sources of legitimate moral claims and this entails the presence of two different original positions. Persons and peoples are both moral agents in the political sphere and their moral claims should not be subordinated to one another. Rawls seeks an appropriate balance between the individual rights of persons and the collective rights of peoples. These two sorts of rights should not be put in lexical order. Finally, he sees toleration and not autonomy as the most important liberal value. But toleration is not an independent moral principle. As distinct from the version espoused by Charles Larmore (1999), Rawls' version of political liberalism is based on a political principle of toleration-as-respect that stems from the political sphere, and not on the moral attitude of tolerance-respect for others.

So political liberalism has three main features that must be contrasted with the classic version of liberalism. The political conception of persons and peoples, the claim that both agents are autonomous sources of valid moral claims and the political idea of toleration-as-

respect provide a version of liberalism that has disenfranchised itself from the moral individualism contained in the classic versions of Kant and Mill. This explains why political liberalism is much more hospitable to politics of recognition, even when it is cast in terms of a system of collective rights for peoples. For when it is understood as respect for others, the principle of toleration is a form of recognition. So political liberalism is itself a form of politics of recognition. And since it is committed to respect all agents in the political sphere, toleration entails respect for other peoples as well as respect for other persons. Agents acting in the political sphere become moral agents if they apply this principle of toleration. And finally, as a constructive contractualist theory of justice, the recognition of persons and peoples takes the form of a system involving two sets of rights for persons and peoples.

With this general normative account in the background, I wish define the notion of people that I intend to use. I will need to spend some time on this point, because very often the hostile reactions to a politics of recognition for peoples depends upon the concept of peoples that is used. Since I endorse political liberalism, I adopt a political conception of peoples.

(a) Peoples, in the political and not the metaphysical sense, are groups that come equipped with a certain institutional identity in the political space. Just as persons, in the political sense, are considered as having an institutional identity of citizens, peoples understood in the political sense also have an institutional identity. That is, we maintain a neutral ontological position on whether peoples should be considered as mere aggregates of individuals or as complex social organisms. These metaphysical issues are set aside when we adopt a political conception.

(b) The institutions that shape the identity of peoples are not necessarily political institutions. The Acadian people, for example, are identified by a set of institutions that characterize them in the political space although they are not political institutions. Among the relevant features of the Acadian people, we could mention : a language with a distinctive accent, a shared history, and certain institutional features such as schools, colleges and universities, a flag, spokespersons and annual celebrations. But Acadians do not have an autonomous government. Nevertheless, national groups that do not have a more-or-less official political organization be honored with respect and recognition.

(c) Together, the institutions of a people form a ‘societal culture’ (to borrow a phrase from Will Kymlicka) – that is, a ‘structure of culture’ existing in a crossroads of external (moral, cultural, social, economic and political) influences and offering an internal context of choice (a set of moral, cultural, social, economic and political options). Societal cultures also exemplify a certain ‘character of culture.’ But the structure of culture must not be confused with the character of culture (Kymlicka 1989: 166-168). The cultural character is constituted by the beliefs, aims, values, projects, ways of life, customs and traditions shared by a critical mass within a population at a given moment. These are to be contrasted with the three essential elements that compose in its simplest form the structure of culture: a common public language, common public institutions (those in which the common public language is spoken primarily) and a common public history (that relates to the common public institutions).

Language is at the core of the structure of culture and it plays a crucial role in shaping a distinctive identity among a people. But it need not be a distinct language. Two peoples can share the same language and yet be very distinct from one another. This is because they may have different institutions, different histories, different crossroads of influences and different contexts of choice.

(d) The character can change, even if the population maintains essentially the same structure through time. The structure of culture also changes through time, but at a different pace and it can remain the same even though cultural characters have changed completely.

To illustrate how the structure of culture must be contrasted with the character, it is important to consider each of its three main features. The linguistic component of the structure does not necessarily convey only one conception of the common good or of the good life. It can be used to express a wide range of beliefs, aims, values, projects, ways of life, customs and traditions. Therefore a reasonable and irreducible pluralism of points of view may take place by way of a people's language. Secondly, this is also true of the common public institutions. They are not necessarily the reflection of a set of particular customs and traditions. They too can represent an irreducible pluralism of values and points of view. The very normative principles that govern those institutions may also change while the institutions remain in place. Finally, the common public history is essentially defined by a common heritage of public institutions and not by adopting a specific narrative. In principle, it is compatible with an irreducible diversity of stories and interpretations. The common public history is thus not necessarily the reflection of a commonly shared narrative identity.

(e) Peoples are often composed of a single societal culture, but they can also be composed of many societal cultures. Spain, Canada and Belgium may be understood as multisocietal peoples, each composed of many particular societal cultures. So a people can be multilingual. That being said, it is impossible to divorce the idea of a people from the idea of a societal culture. For peoples are either single societal cultures or aggregates of societal cultures.

(f) Once peoples are understood as structures of culture that exist in a crossroads of influences and offer contexts of choice, we owe them respect, as long as they respect the civic rights of the person and respect other peoples. Whether or not the respect due to peoples can be reduced to their collective rights, these collective rights constitute a necessary condition for a politics of respect that is owed to peoples. The respect due to peoples must not take precedence over the respect due to persons, but the same remark applies to persons: they do not take precedence over peoples. I advocate an axiological pluralism in which the rights of peoples must be kept in equilibrium with the rights of the person.

(g) Peoples do not have intrinsic value, because they have value only if they encourage cultural diversity. They can do so in two different ways. When they provide a large context of choice, they favor internal cultural diversity. When they are distinct from all the other peoples, they contribute to external cultural diversity. At times, peoples may harass minority groups or attack other peoples, but in so doing, they lose their right to be respected and this is because by doing so they go against the preservation and promotion of cultural diversity. I will not, however, dwell on this argument – I will take it as a given that peoples only have an instrumental value, and that, insofar as they serve the cause of cultural diversity, we must

treat them as valuable. It is therefore also important to acknowledge the value of cultural diversity, and acknowledge that it is not itself something that has an intrinsic value.

How can we argue for the value of cultural diversity if we are not assuming this principle as an autonomous moral truth? For the purposes of this presentation, I will simply mention the fact that an important consensus concerning the value of cultural diversity took place when the *Convention on Cultural Diversity* was signed by 148 out of 150 countries on the 20<sup>th</sup> of October 2005. But what could support this consensus? It is perhaps the following. On the basis of the respect that we owe to peoples as tolerant institutional bodies present in the global or domestic political space, we notice that there are socioeconomic and cultural structural inequalities between them in the global or domestic basic structure. In order to minimize these inequalities as much as possible, we decide to adopt policies based on a socioeconomic difference principle or on cultural politics of difference. These policies respectively express our attachment to the diversity of natural resources and to cultural diversity. Just as the value of the diversity of natural resources is not asserted as a premise but must rather be seen as the conclusion of the argument for the difference principle, so the value of cultural diversity is not asserted as a premise in the argument for politics of difference. It is rather the conclusion of the argument. This is why we are not committed to treat cultural diversity as having an intrinsic value. The value of cultural diversity is not established as an independent normative objective truth. It is constructed from the basic political tolerance-as-respect that we owe to peoples and from the observation of inequalities among peoples.



(h) Still in accordance with political liberalism, peoples do not exist without a collective will to survive and without a national consciousness. The population must be perceived by the majority as forming a community centered around one or more common public languages, a set of common public institutions, and a common public history. Peoples are not objective entities that remain the same through time, with essential characteristics, and to which we belong involuntarily. They must also have a collective will to survive as a people, as emphasized in Renan's metaphor of the 'daily plebiscite.' And they must be part of the self-representation of the population as a whole.

(i) Nor is there just one kind of people. There are ethnic, civic, cultural, sociopolitical, diasporic, multiterritorial and multisocietal peoples. This variety is explained by the fact that peoples shape their national consciousness very differently. (i) Ethnic peoples see themselves as sharing the same ancestors. Some aboriginal peoples see themselves in this way. (ii) Civic peoples see themselves as constituting a unique country not containing any national minorities. The population of France and Japan see themselves in this way. (iii) Cultural peoples do not have a sovereign state and do not have political institutions, but see themselves as sharing the same societal culture within the confines of a sovereign state. As I argued above, the Acadian people provides a good example of this. (iv) Sociopolitical peoples are societal cultures that have political institutions such as a canton, a province, a federated or quasi federated state, or a self-government created by a certain devolution of powers, but not a sovereign state. Of course, it is not sufficient to have political institutions in order to become a sociopolitical people. One must also be a societal culture. Scotland, Catalonia and Quebec are good illustrations. (v) Diasporic peoples are societal cultures that are spread on discontinuous territories and that form minorities on each of these territories.

The old Jewish diaspora has always been a perfect illustration of such kind of people. (vi) Multiterritorial peoples are societal cultures spread on many continuous sovereign territories. This is so for the Kurds and the Mohawks. (vii) Finally, multisocietal peoples are multinational states in which the population shares the awareness of belonging to a country including many different peoples. Great Britain is a perfect illustration of this, even though it is not multilingual.

In addition to this wide variety of peoples, we should also acknowledge different fragments of peoples. Populations may entertain a certain sense of belonging to a societal culture without entertaining the idea that they form a people all by themselves. (i) Immigrant groups provide the clearest illustration. Very often, immigrants share a sense of belonging to a same community on the territory of the welcoming country but they do not pretend to form a people on their own on this territory. Immigrant groups are discontinuous diasporas recently established in a country that do not constitute a people as such but that still identify with a foreign people. (ii) Another example of discontinuous diasporas is provided by historical communities that no longer can be described as immigrant communities, although they continue to identify with the culture of a foreign country. Chinatown in New York city, Little Italy in Montreal or the Turkish community in Germany are examples of this. (iii) The same kind of remarks applies to what could be called ‘continuous diasporas,’ that is, extensions of a neighboring people on a different territory. They too are fragments of peoples that do not form peoples all by themselves. Examples abound to illustrate this situation. The Russian minorities in Baltic countries, the Palestinian minority in Israel, the Hungarian minority in Slovakia are all clear illustrations of this. (iv) Finally, a societal culture forming a majority within a country may identify itself with the country as a whole.

Under this account, the people is composed of all the citizens of the country. So the majority societal culture does not represent itself as forming a people all on its own, although it is clearly a distinct societal culture. The English majority in Canada seems to offer a very clear illustration of this.

(j) Let me mention one final feature of the present account of peoples. Any account of peoples must be compatible with the acknowledgement of diversity, of multiple identities and of the dynamic character of national identity. Even if the nature of the people is determined by the prevailing national consciousness entertained by a majority within the population, it is not always legitimate. It could be legitimate only if it is accompanied by a genuine recognition of diversity, of multiple identities and of the changeable character of identity.

It is fairly easy under my account to acknowledge diversity since I adopt a diversified account of national identity. I am thus in a position to accept within a single sovereign state the presence of ethnic, cultural and sociopolitical peoples, as well as fragments of peoples such as continuous and discontinuous diasporas. I also can acknowledge multiple identities in a variety of ways. Immigrants may simultaneously identify with a foreign people and with their new welcoming national community. Individuals may also have multiple citizenships. And even more importantly, it is possible to identify with an ethnic, cultural or sociopolitical people while reaffirming our loyalty to the encompassing state in which these national identities are embedded. One can all at once belong to an aboriginal people and to the Canadian or to the Quebec people. One can be an Acadian or a Quebecer and also be part of the Canadian people. One can be an English Montrealer and be part of the Quebec

people. Finally, the diversity of peoples that I introduce also enable me to account for the dynamic character of national identity. An ethnic people may after a while turn into a multiethnic cultural people if it becomes clear in the mind of everyone that individuals with different ethnic origins may share the same societal culture. Also, an ethnic or cultural people may become a sociopolitical people if the people achieves some kind of self-government. And an ethnic, cultural or sociopolitical people may turn into a civic people or a multisocietal people if it becomes a sovereign state. Fragments of people may in addition come to form peoples all by themselves after a while, if their members no longer identify with a foreign country or with a neighboring people but keep their sense of belonging to a single societal culture. All of these facts clearly illustrate the dynamic character of national identity.

### **3. Responses to some objections**

With the normative apparatus of political liberalism and the particular account of peoples just outlined, we are now in a position to examine different objections formulated against the recognition of peoples understood as a system of collective rights. I would like to answer these criticisms with the help of political liberalism and by using the political conception of peoples. As I mentioned before, I shall be synoptic in my presentation because I want to show the general fruitfulness of the present account.

*Criticism 1* – Many theorists see peoples as nothing more than associations of individuals. Thus, in their eyes, it is problematic to treat them as subjects of collective rights. The rights that peoples have must be reducible to individual rights. If peoples are simply aggregates of

individuals, the rights granted to them should clearly amount to an aggregate of individual rights. The response here is that within the framework of political liberalism, metaphysical considerations should not come into play. The relevant agents in the political space are simply those who have a distinct institutional personality. They need not metaphysically be reduced to an aggregate of individuals.

The relevant agents in the political space are those who have distinct institutional features. Peoples have a distinct institutional ‘personality’ as societal cultures in the public space. Elected spokespersons speak in the name of the people. The institutional attributes of peoples (a common public language, institutions in which it is spoken and a common public history) do not present themselves as attributes of individuals in the public sphere. So societal cultures are autonomous agents to whom we owe respect if they are themselves respectful toward other individual and collective agents. And it is not necessary to construe peoples as organic wholes in order to confer to them the status of autonomous moral agents. We simply need to acknowledge their autonomous presence in the political space.

A similar response is required concerning the interactionist arguments formulated by Jürgen Habermas (1993) and Axel Honneth (1996). These authors do not embrace the atomistic conception involved in traditional theories of contract. Like Hegel, they acknowledge that self-awareness could not exist except through the recognition of other self-awarenesses. They acknowledge that individuals acquire autonomy only through a process of socialization that they interpret in the style of George Edward Mead (1934), and recognize that persons have a dialogical identity. Nevertheless, society seems to them to be reducible to interactions between individuals. I give the same response to these authors. Political liberalism avoids an

ontological interactionist reduction and acknowledges agents at their face value as they appear in the political space. When they are appreciated in the political space as having an institutional identity, peoples are autonomous agents.

*Criticism 2* – Others like Appiah (1994) and Kukathas (1992) believe that a collective identity cannot be anything other than a communally shared set of values, beliefs, aims, or projects. These philosophers have a communitarian conception of peoples. So to recognize peoples and allow them to enjoy collective rights amounts to promoting one specific conception of the good life or of the common good, which violates the principle of neutrality and the primacy of the right over the good, adopted by liberal philosophers. But this criticism does not affect the approach that I am now proposing, because it does not take into account the previous distinction that was made between the structure of culture and the character of culture. Peoples are the subjects of rights as structure of cultures and not as having certain cultural characters. Many societies do not have a homogenous character, and those that do are not entitled to rights for this very reason. Communitarian societies are peoples in which the institutions that form the basis of the structure of culture illustrate a particular conception of the good life or of the common good. They are also under certain conditions entitled to collective rights. But it is not as communitarian societies that they are the sources of valid moral claims. It is as societal cultures exhibiting a certain structure of culture.

*Criticism 3* – Some embrace a comprehensive version of liberalism and endorse individualism as put forward by Kant and Mill. (Kymlicka 1995, Buchanan 1994, Tan 2000) This leads them to subordinate, at the level of justification, all collective interests to individual interests. In order to be liberal, rights must be based on individualistic justifications. But this criticism

fails to see the true originality of political liberalism and the paradigm change that it represents within liberal thinking. As I mentioned before, classical liberalism considers that persons are “prior to their ends,” considers them as the ultimate sources of valid moral claims, and posits that autonomy is the most important moral liberal value. Political liberalism, on the other hand, is based on a political conception of the person and a political conception of peoples. It acknowledges that peoples are, like persons, sources of valid moral claims. And the fundamental value of liberalism is toleration, not autonomy. Thus it is a version of liberalism that has freed itself from moral individualism. When liberalism is understood in this way, it no longer is in opposition to collective rights. On the contrary, it welcomes them and provides a suitable normative framework for them.

*Criticism 4* – Others force us into an opposition: either we argue for the instrumental value of peoples and consider them as having value only insofar as they serve the interests of individuals, or we grant them an intrinsic value. (Appiah 2005) But this set of options is incomplete: we can deny that peoples have any intrinsic value but also deny that they have an instrumental value for individuals. As I suggested, they can have value simply insofar as they serve the cause of cultural diversity.

*Criticism 5* – There are those who believe that this opposition is not a valid one if we believe in the intrinsic value of cultural diversity. (Appiah 2005) In other words, if we acknowledge the intrinsic value of cultural diversity, and if societal cultures play a central instrumental role in the preservation of cultural diversity, then this amounts to afford an intrinsic value to societal cultures as such. In other words, although we are paying lip service to the

instrumental role of peoples for cultural diversity, we are only revisiting a problematic discourse that affirms the intrinsic value of culture.

But I have also claimed that cultural diversity was not a value in and of itself. The value of cultural diversity is the conclusion of an argument based on the respect due to people, and on the observation of unequal relationships between peoples in the domestic and global basic structures. So cultural diversity itself must not be cast into the same kind of opposition between its instrumental role for the individual and its intrinsic value. We are as a matter of fact in a position to deny that cultural diversity is an intrinsic value or that it has value for individuals only. The value of cultural diversity is not an objective moral claim that can be introduced as a premise in the argument leading to the recognition of peoples. It is rather the conclusion of the argument.

It is important to notice that we are not falling prey to a circular argument here. It may at first appear that a circular argument is taking place because we are justifying the value of cultural diversity on the respect that we owe to peoples. For how can we respect peoples if we are not already valuing their contribution to cultural diversity? But the respect that we owe to peoples must not be confused with the value of their contribution to cultural diversity. We must respect all peoples as autonomous institutional agents in the political sphere. Of course, this respect is conditional upon their not going against cultural diversity, but it is not because of their contribution to cultural diversity that we owe them some respect. It is as autonomous institutional agents in the political sphere that we must respect them. We then come to value them when we decide that there are inequalities among peoples. The political principle of toleration-as-respect then turns into some kind of esteem



expressed by politics of difference, and this amounts to an endorsement of their contribution to the preservation and promotion of cultural diversity.

*Criticism 6* – Still others criticize the apparent essentialism in the idea of peoples being the subjects of rights. (Appiah 2005, 2006a, Sen 2006, Barry 2001, Benhabib 2002, Kukathas 1992) Since constitutions run over an extended period of time, peoples must remain the same through time if they are to be the same subjects of rights. If we do not essentialize peoples, how can they remain the same through time? If we adopt a political conception of peoples, this objection no longer appears to be well founded. It is only through their institutions that peoples may up to a certain point remain the same through time. The problematic character of the objection is also revealed by the analogy with persons. It is not clear why the situation of persons should be any different. Is it not also necessary to avoid reifying or essentializing persons? And yet, we have no hesitation in treating them as the subjects of rights. Why? Because it is as citizens that persons are afforded rights. In political liberalism at least, it is not necessary to talk about natural rights that we owe to persons in the abstract. Human beings are citizens of a people in a domestic basic structure or citizens of the world in a global basic structure. I would argue the same thing concerning peoples. I recommend that we adopt an institutional conception of peoples and consider that it is as societal cultures that they can be the subjects of rights. And if we do so, we notice that peoples may keep their basic structural features for quite some time. Even if their character of culture may change from one generation to another, they may keep their structure of culture for a fairly long period. It will at least be long enough for justifying the incorporation of their collective rights in a constitution.

*Criticism 7* – In the same way, some embrace a narrative conception of collective identity and have difficulty in conceiving the possibility of a lasting collective narrative identity. (Benhabib 2002) For such a narrative identity to come into existence, persons must embrace the same story. This makes the collective narrative identity extremely fragile, and makes recognition in the form of a system of collective rights impossible. Therefore they suggest that we confine recognition to the informal sphere, reserving formal recognition of individual rights to individual persons in the legal sphere. But persons also have diverse, multiple and changing narrative identities, and this does not prevent us from granting them individual rights. This is undoubtedly because their public identity is not determined by their narrative identity, but rather by an institutional identity. I wish to argue the same for peoples.

*Criticism 8* – Some consider that granting collective rights to national groups leads directly to a form of collectivism in which group rights take precedence over the rights of persons. (Kymlicka 1995) But it is possible to espouse an approach that stems from an axiological pluralism, and acknowledge an equilibrium between individual and collective rights without seeking to place them in a hierarchical relation to one another. Even those who endorse the contractualist idea of lexical priority of principles must acknowledge that we are not always in a position to order all the principles. Rawls, for instance, does not place an order between negative and positive liberties, or between civic and political rights; nor does he choose between the Liberty of Ancients and Liberty of the Moderns. One cannot perhaps entirely disenfranchise oneself from a certain amount of intuitionism in political theory. In a way, I am suggesting that a little more intuitionism should be incorporated in the theory. But it is not a moral intuitionism like the one found in G.E. Moore. It is a political version that

avoids any strong lexical ordering of political principles and also avoids any commitment to their intrinsic moral objective truth.

*Criticism 9* – A similar criticism assumes that a system of collective rights for peoples is part of an ecological vision of the world, as though it were a case of protecting endangered species. (Habermas 1994) It is then claimed that this view is in a radical opposition to all forms of assimilation and it entails a preservationist stance toward cultures. But this is not my argument at all. Peoples do not have an intrinsic value. They only have an instrumental value for cultural diversity. I do not even claim that all peoples are intrinsically worthy of respect. They should only be respected if they respect other political agents in the political space. Moreover, I have also stated that the national identity of a people is based on a collective will to survive as a people and on a self-representation. Without a collective will to survive as a people and without this self-representation, there is no reason for collective rights to be granted. So the members of a people may under very special circumstances have an interest in allowing themselves to be assimilated. They will then lose their collective will to survive as a people. All of this helps to radically distance my own approach from all preservationist and anti-assimilationist theories.

*Criticism 10* – Another problem relates to the determination of the general will of a people. (Appiah 2005, Kukathas 1992) Am I accepting that this could be ascertained by an elite? Not at all – the will of the people must be determined by the population itself in virtue of the democratic principle interpreted by the majority rule. This however does not consist in a reduction of the general will to an aggregate of individual interests. The democratic principle entails only that each person may contribute to the interpretation of the general will of the

people. Although I can commit myself as an individual citizen concerning a particular interpretation of the general will of the people, it is not the same thing as if I were committing myself concerning a set of individual interests. The will of the people is interpreted by individual citizens but it is not reducible to an aggregate of individual interests.

Of course, peoples do not express themselves as peoples in the public space. They need spokespersons, and it is important that an elite claiming to act as a spokesperson does not determine the will of the people. In other words, in order for spokespersons to be credible, they must be democratically elected and the claims they make in the name of the people must reflect popular will. Peoples who are worthy of respect and whose claims may be considered morally valid are democratic peoples. But it is not necessary for this to be interpreted in terms that reinforce the atomizing or the interactionist point of view.

There are several ways of contributing to democratic life: by giving one's opinion as an individual on questions that reflect personal interests or those of all persons, or by giving one's opinion as the member of a group in order to interpret what constitutes the interest of one's own people or the interest of all peoples. Individual questions require the consent of each individual and are prevalent within societies that are considered liberal, while the second type of questions require a majority point of view and are prevalent in democratic communitarian societies.

*Criticism 11* –But if the will of the people is the prevailing interpretation of the majority, don't we run the risk of violating the rights of the internal minorities? (Green 1994) This is

why certain philosophers maintain that granting collective rights to a group is problematic. The problem is that this apparently inevitably leads to the oppression of its own minorities. The solution is obviously to accept that minorities within these groups should also be the subjects of collective rights. There is no reason to grant collective rights to some societal cultures and not to the minority cultures within them.

*Criticism 12* – Some argue that by replacing the value of autonomy with the political principle of toleration, we risk ending up with an unjustified respect toward decent hierarchical societies, namely those societies that are non violent but also undemocratic. (Tan 2000) As undemocratic, they violate the political freedoms of their citizens. Rawls, for instance, has argued not only for the application of liberal toleration to decent hierarchical societies. He also considers them to be partners in ideal theory. For this reason, he is led to adopt a relativistic and historicist version of liberalism.

This is a legitimate criticism directed against Rawls. My response is that we should value only *democratic* societies in ideal theory. Decent hierarchical societies must be *respected* but we can only *esteem* democratic societies. In ideal theory, the only societies that can be part of a sincere consensus based on political conceptions of persons and peoples are those that share democratic principles. Does this amount to letting the value of autonomy in through the back door and to consecrating it as a more fundamental value than that of toleration? The reason for thinking that we are reintroducing autonomy as a more important value is that democracy goes hand in hand with rational autonomy. So by imposing a democratic constraint on the respect of other societies, we are in effect treating the value of rational autonomy as a more central feature of liberalism.

But this is not a correct assessment of what I am claiming here. First, I am indeed committed to treat decent hierarchical societies with respect, but this is a requirement that takes place in non ideal theory. So this is a first difference with Rawls. Secondly, the notion of rational autonomy that I am using may be defined as minimally involving three things: reflexivity, strong evaluations and a capacity for thought experiments. Someone who is able to perform these three capacities is someone able to behave as a citizen in a democratic society. Now this process does not force us to adopt a conception of the person as prior to her ends. A communitarian individual could develop these capacities in a process of self-discovery. At the end of this process, she would discover her authentic self understood as a set of beliefs, values, ends, customs and traditions. In this sense, rational autonomy is compatible with a conception of democracy understood in the communitarian sense and not only in the individualistic sense. The concept of a communitarian democracy is not an oxymoron. Here, I once again depart from a Rawlsian account. For him, rational autonomy cannot be accommodated within a communitarian society and there cannot be communitarian democracies. Under my account, democracy can be the subject of an overlapping consensus between different communitarian and individualist ways of practicing democracy, and as the adoption of a common concept of rational autonomy can be seen as resulting from the practice of toleration between the different democratic traditions within these societies.

*Criticism 13* – Another argument must be countered. The proponents of collective rights have often been criticized on the pretence that the subjects of these rights must be politically organized groups. (Barry 2001) Under my account, it could also appear that peoples must be

understood as complete societal cultures offering a wide context of choice. So it appears that only full societal cultures will benefit from collective rights. The subjects of these rights would be politically organized groups that are at an advantage in relation to disadvantaged groups that are not politically organized in any official way. So this is unjust and somewhat paradoxical. If any group deserves assistance, it should be those who are on the verge of desintegration and not full societal cultures.

But as I have stated, the political conception of peoples does not mean that peoples need to have a political organization. Rather, I referred to an institutional organization while making it clear that this does not have to be a political self-government. The political conception of peoples is the conception of peoples as they appear within the political arena and as they appear within the framework of an approach such as political liberalism. Peoples who do not have a political organization must be taken into account, and they deserve respect. They must be considered as the subjects of collective rights from the moment they appear in the public space with a certain institutional identity.

A similar criticism was made of Will Kymlicka's own position on the subject. In his opinion, a people acquires value insofar as it offers a context of choice for its members. We therefore can assume that peoples would have far greater value if they offered a greater range of possibilities to their members, a greater context of choice. Full societal cultures thus have an advantage over groups that are not politically organized in any official way. This puts peoples with a reduced context of choice at a disadvantage, such as native peoples. Even worse it encourages States to stop the development of the societal cultures in question, for it is only

by developing their institutions that they might then be in a position to claim collective rights.

I leave it to Kymlicka to respond to the objections addressed to him on this subject, but I would like to note that my own approach does not have the same vulnerability to this criticism. Peoples acquire value not only through their contribution to internal diversity (the context of choice) but also through their contribution to external diversity, at the international level. Even if certain native peoples are in a state of devastation and do not offer a very large context of choice to their members, they can have value because they contribute to external diversity.

*Criticism 14* – Finally, there are those who believe that we have entered a post-national age, and this is taken to mean that the promotion and protection of peoples is outdated. This is the cosmopolitan argument. There are several versions of the argument to this effect. Some simply predict the imminent disappearance of the nation-state. (Waldron 1995) Others are more prudent in their prognosis and recognize that the nation-state is likely here to stay, but they claim that the nation is no longer the primary factor in determining the population's identity within the State, even if the population lives in a mono-national state. It is the constitution that now binds the identity of all citizens. (Habermas 2001) Finally, there are those who recognize the importance of the nation as a key element of identification, but they claim that it should not play the role of moral agent in international distributive justice. (Caney 2001, 2005)



There are many reasons for calling into question the first suggestion that we have entered a post-national era and that the nation-state is about to disappear. Since the fall of the Berlin wall, it would seem that we have seen everything - except the disappearance of national identities, nationalism and nation-states. Quite to the contrary, the nationalist phenomenon seems to have become even more prominent. The U.S.S.R. dissolved into fifteen separate republics. The multinational federation of Czechoslovakia was divided into two independent republics: Czech Republic and Slovakia. Yugoslavia was also separated into several independent countries: Slovenia, Croatia, Bosnia-Herzegovina, Serbia, Macedonia, Montenegro and Kosovo. The Palestinian question remains omnipresent, just like those of the Chechen and Tibetan nationalisms. National issues are behind the conflicts in Northern Ireland, Cyprus and Kashmir. The United Nations is aiding the process of self-determination in East Timor, Eritrea and Western Sahara. Corsican, Catalan, Basque, Galician, Quebec, Acadian, Flemish, Walloon, Welsh and Scottish nationalisms continue to add fuel to the debates. The recognition of native peoples is more and more difficult to avoid. In short, everywhere we look, nations, nationalisms and nation-states continue to affirm themselves. As far as I can see, this puts to rest the claim that nation-states are about to disappear.

But what about the claim that the nation no longer binds together the citizens of a country? Here the objection is not one announcing the death of the nation-state. It is simply claiming that what holds it together is no longer the nation as such. In my view, these arguments often confuse nations and states. It is true that states are now the subject of tensions like never before in history. They are weakened by external and internal forces. Internally, they must frequently grapple with particularisms, but these are most often the particularisms of national minorities. Current methods of communication make it increasingly easy for

immigrant minorities to maintain close ties with their countries of origin, making it more difficult to integrate them into their new country; but if this shows us anything it is the solidity, or reinforcement, of national identities within immigrant groups. If they weaken the communal ties within their new community, by the same token they reinforce the communal ties with their country of origin. In many cases, it is possible that the loss of identity incurred on the national level for a welcoming community is largely compensated by the reinforcement of ties at the level of its national Diaspora abroad.

When we speak of the ravages incurred by globalization that would affect the ties of national identities, we are also thinking about economic globalization. These are the external forces apparently weakening nation-states. But is globalization anything other than the hegemonic power of one country – the American superpower? Liah Greenfeld (2001) has already emphasized this point. In her opinion, the values that we associate with economic globalization are largely attributes of the American national identity. Imperialism, even economic imperialism, is a form of nationalism that can be categorized in the same way as colonialism and ethnocentricity. Of course, we must not oversimplify this point of view, since the USA is increasingly faced with fierce competition from the European union, Japan, and China. But, again, these are sovereign countries engaged in a race that illustrates economic nationalism at least as much as the liberalization of trade.

So nation-states are indeed confronted with pressures arising from economic globalization, but it is to a large extent a matter having to do with economic imperialisms. Globalization can perhaps not be reduced to American imperialism or to the imperialism of any other country seeking to establish hegemonic power. But neither can it be understood without

them. In short – we have not left peoples and nationalism behind. They are still present all around us.

The third version of the cosmopolitan argument against the recognition of peoples is based on the idea that distributive justice should not involve peoples. Insofar as we see the growing power of certain supranational organizations and the necessity of creating them and allowing them to intercede either to counter or to pave the way for globalized economic development, we are claiming to be in a position to predict the imminent non relevance of nation-states. According to this view, there would be an analogy between our age and the modern age. Just as the economic development of the modern age would have influenced the importance of national identity, the economic evolution in the contemporary world announces its relatively marginal influence. The capitalism of the printing press and the need to impose a standardized system of education over a large territory to expedite economic development in the modern age made possible the creation of an imagined community and favored the creation of large nation-states. But now, the globalization of the economy announces that the future national identity and of the nation-state is bleak.

I can immediately respond that the analogy proves the opposite. Large nation-states, made possible by the capitalism of the printing press and the necessity of a standardized system of education, have superposed themselves onto local identities without making them disappear. On the contrary, these local national identities have reasserted themselves as national minorities seeking for recognition. In the same way, globalization creates global citizens, but does not make national ties of identity disappear simultaneously. Nor do they become irrelevant.

But is the European Union not proof in itself that the nation-state is in the process of losing its importance? The EU is no exception in my view. (Seymour 2004a) In order to prove this, we can of course mention the difficulty of adopting a constitutional treaty for the union as a whole. But there are other factors that serve to show the prevailing force of nations and nationalism. The negligible financing accorded to the EU's institutions (1.2% of the GNP of each member country), France and Germany's ability to impose a veto on any change that doesn't suit them, the growing refusal to transform the EU into a federal entity and the total absence of provisions that would force the already existing members of the union to promote and protect the rights of their own minorities, these are all elements pointing in the same direction. These facts indicate that the nation-state is still a major active force. We see the permanence and resilience of nationalisms, nations and Nation-states everywhere.

We must understand what the phenomenon of economic globalization consists of. It is true that it has a strong effect on peoples' margin for maneuvering. But what does it consist of? Increased free trade, the increased merging of businesses and banks, the delocalization of businesses, the growth of the stock volume caused by computerization, the creation of vast conglomerates of multinational companies, the growing strength of international organizations such as the World Bank, the International Monetary Fund and the World Trade Organization, and bank merging are obvious manifestations. But what does all this lead to? This leads to the concentration of capital, the means of production methods and decision centers being in the hands of a small number of people, and it is these things that considerably limit the power of sovereign states. But precisely for this reason, we can

imagine, in a not-so-far-off future, the possibility that these sovereign states will want to limit the power of economic superpowers in order to protect their own interests.

Of course, it is possible that states will, for a time, engage again in a fierce competition to attract the capital of large companies. They will try to gain the sympathies of the American superpower and other economically powerful countries, and will wish for this reason to open their markets to free competition. But as soon as most sovereign countries have experienced the negative consequences of a concentration of capital, of having the means of production and the decision centers in the hands of a small number, members in organizations such as the WTO could be persuaded to oppose this phenomenon of globalization. It will be possible to incite countries to defend all national economies against the hegemonic power of an increasingly reduced number of possessors. One possible reaction of sovereign peoples, like those of the 148 countries that signed the Convention on Cultural Diversity, might be on the economic level. If we recognize that the hegemonic power of American culture should be countered with measures such as the Convention on Cultural Diversity, this leads us towards the rediscovery of the importance of national identities.

## **Conclusion**

In this paper, I have tried to show that political liberalism was perfectly compatible with a dual system of individual rights for persons and collective rights for peoples. I showed how this approach was able to avoid many problematic consequences that are generally associated with the idea of collective rights. There are however numerous other objections that I have not discussed in this paper and that should be taken very seriously. For instance, another

type of reaction against the incorporation of collective rights for peoples into a constitution is that this would stem from a legal fetishism. By suggesting that a constitution should contain provisions involving collective rights, aren't we putting a lot of weight on the legal system? As I see it this reaction betrays a bias in favor of individual rights, because those who criticize the incorporation of collective rights for peoples into a constitution usually have nothing to say against the inclusion of a charter of individual rights and liberties in this same constitution. Thus they express a legal preference that in the end has nothing to do with the rejection of legal fetishism.

Others more consistently reject the incorporation of any rights in a constitution because they fear the juridicalisation of politics. But, apart from the fact that they constitute a minority, the incorporation of both individual and collective rights can be done in a way that respect the political realm. Judges may provide only general procedural guidelines for politicians, they can assist them by providing only legal consultants and they can even decide that some of the problems should be adjudicated in the political sphere. The court might indeed decide to return a litigated question that is submitted to them and ask politicians to solve it. So it is not clear that the incorporation of rights into a constitution leads to the juridicalisation of politics.

A correct account must also deal with the problem of institutionalization of collective rights. One could argue that even if there were moral justifications for introducing this kind of rights, we could only conclude in favor of *moral* collective rights and not *juridical* collective rights. That is, the question remains to determine how to translate the theory into practice. For instance, how shall we discriminate between groups that are and groups that are not

peoples? What is the appropriate criterion of identification of nations as such? This is only one among many difficulties that must be answered if we are to engage into incorporating these rights in a real system of laws. What is the impact of institutionalized collective rights on the stability of society? Other difficulties concern the legal instances that are going to be responsible for their implementation, the determination of the sanctions for those who don't comply with the rights, or the formulation of criteria for establishing which moral collective rights can be institutionalized and which rights cannot be institutionalized.

I also haven't discussed why peoples (and fragments of peoples) were the only groups entitled to collective rights. What's so special about peoples? (Buchanan 1998) Why should they be the only ones entitled to collective rights? Why should we exclude groups like women, gays, trade unions and religious groups? My answer is that peoples are the ultimate sources of cultural diversity. If art, language, customs, traditions, ways of life serve to illustrate cultural diversity, it is because these phenomena are intimately related with different peoples living on different territories. But I also wish to argue that political liberalism can welcome another kind of moral agents in the political realm. In addition to persons and peoples, we must respect groups that have been legally incorporated. They are entitled to rights as "legal moral persons." We should thus make room for religious groups, trade unions, companies, as well as groups of women, gays, etc. If these are corporate bodies. that are entitled to a specific regime of rights.

I also completely avoided the complex differences between my own account and the account of those who within classical liberalism subordinate the recognition of peoples to the interests of individuals and in the name of individual autonomy. In short, I did not discuss

the possibility of accommodating a regime of group differentiated rights within the framework of moral individualism, such as in the works of Kymlicka 1995, Tan 2000, Buchanan 1994, Tamir 1999 and so many other liberal philosophers. I believe that are insuperable difficulties affecting these approaches, but I firmly avoided these issues in the present paper. Here I simply refer to my own book on the subject. (Seymour 2004b)

Finally, I haven't discussed the political motivations that explain the rejection of collective rights. So let me just end on the following political observation. Criticisms on the subject of collective rights for peoples are often driven by an impulse towards national construction that has every appearance of state nationalism, rather than by substantive arguments. State nationalism plays a large part in explaining the new intellectual trends that have appeared among thinkers who, historically, have showed a favorable attitude towards the politics of recognition. It may explain why so many voices are raised to say that formal recognition is not necessary nor even desirable, to criticize the formal recognition of peoples or to object to the UN's Declaration on Native Peoples. This formidable ingenuity on the part of so many intellectuals what is clearly a withdrawal strategy in response to the legitimate demand for formal recognition of peoples can perhaps only be explained by the desire to adjust to state nationalism. Intellectuals try to convince themselves that there are philosophical arguments to explain why collective rights should not be granted. But if I am right, many of these arguments conceal an objective alliance with state nationalism.

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